

FEDERAL LICENSING OF CORPORATIONS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

THIRD SESSION

ON

S. 10 and S. 3072

BILLS TO REGULATE INTERSTATE AND FOREIGN COM-
MERCE BY PRESCRIBING THE CONDITIONS UNDER
WHICH CORPORATIONS MAY ENGAGE OR MAY BE
FORMED TO ENGAGE IN SUCH COMMERCE, TO
PROVIDE FOR AND DEFINE ADDITIONAL
POWERS AND DUTIES OF THE FEDERAL
TRADE COMMISSION, TO ASSIST THE
SEVERAL STATES IN IMPROVING
LABOR CONDITIONS AND ENLARG-
ING PURCHASING POWER FOR
GOODS SOLD IN SUCH COM-
MERCE, AND FOR OTHER
PURPOSES

PART 4

MARCH 1, 3, 4, 8, 9, 10, 15, 16, 17, 22, 24, 1938

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FEDERAL LICENSING OF CORPORATIONS

TUESDAY, MARCH 1, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to notice, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (presiding), King, Logan, Borah, Norris, and Austin.

Senator O'MAHONEY. The committee will please come to order. This subcommittee of the Judiciary Committee, on January 25, 1937, began hearings on S. 10, a bill to regulate interstate and foreign commerce by prescribing the conditions under which corporations may engage or may be formed to engage in such commerce, and so forth. At the beginning of the present session of the present Congress Senator Borah and I introduced another bill, which is designated as S. 3072, which was a revision and modification of S. 10 and of a bill that had previously been introduced by Senator Borah for the same general purposes. There is now before the subcommittee a revision of S. 3072, an amendment in the form of a substitute, which is under consideration by the subcommittee. That substitute will be the subject of this hearing. It may be incorporated in the record at this point.

(Said S. 3072 is here set forth in full, as follows:)

[Committee Print, February 10, 1938, Showing matter proposed to be inserted in lieu of the present text of the bill]

[S. 3072, 75th Cong., 3d sess.]

A BILL To regulate interstate and foreign commerce by prescribing the conditions under which corporations may engage or may be formed to engage in such commerce, to provide for and define additional powers and duties of the Federal Trade Commission, to assist the several States in improving labor conditions and enlarging purchasing power for goods sold in such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS OF FACT AND DECLARATION OF POLICY

SECTION 1. The Congress finds and hereby declares—

(1) That the Constitution of the United States of America vests in the Congress of the United States full and complete power to regulate all commerce with foreign nations and among the several States, and with the Indian tribes, including all that commerce which concerns more States than one and all that commerce, whether or not carried on wholly within a particular State, which affects other States and which is not completely within a particular State; that the power to regulate such commerce includes the power to foster and enlarge such commerce.

(2) That the franchises, powers, and privileges of all corporations are derived from the people and are granted by the governments of the States or of the United States as the agents of the people for the public good and general welfare; that to a rapidly increasing and, in many industries, to a dominating extent, commerce with foreign nations, and among the several States is carried on through the

instrumentality of corporations created by the several States which are without jurisdiction in the field in which such corporations principally operate; that it is the right and duty of the Congress to control and regulate all corporations engaged in such commerce and that to effectuate the policy herein declared it is necessary and proper to provide a national licensing system.

(3) That the capital of such corporations is frequently furnished by citizens and residents of many States other than the State from which their corporate existence is derived; that the officers and directors of many such corporations as well as their stockholders are likewise, in many instances, citizens or residents of States other than such parent States; and that such corporations are in truth and in fact instrumentalities of interstate commerce and ought to derive their charters by authority of the Congress.

(4) That a constantly increasing proportion of the national wealth has been falling under the control of a constantly decreasing number of corporations, and that the growth of such corporations and such concentration of wealth in corporate hands has effectively impaired the economic bargaining power of labor employed by such corporations.

(5) That many of the causes of such maladjustments of wealth have been and are national in their scope and effect and have been found to be beyond the practical or legal ability of the several States to control or eliminate effectively, and that such causes and effects can be effectively controlled or eliminated only through congressional legislation.

(6) That for the purpose of executing and exercising the power granted to the Congress of the United States in the commerce clause of the Constitution of the United States, for the purpose of preventing the channels, facilities, and corporate instrumentalities of interstate commerce from being utilized to promote unfair or monopolistic methods of competition in or relating to such commerce and for the purpose of protecting, fostering, and increasing such commerce to the end that the capacity of the people to purchase commodities sold, exchanged, transported, or delivered in the course thereof may be increased with consequent reduction of unemployment and correction of the maldistribution and concentration of economic wealth and power, it has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce.

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) "Commerce" shall mean trade or commerce in all its branches with foreign nations or among the several States or between the District of Columbia and any Territory of the United States, and any State, Territory, or foreign nation, or between any insular possession or other place under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States and the District of Columbia, or any foreign nation, or within the District of Columbia, or any Territory or insular possession under the jurisdiction of the United States, or with the Indian tribes. It shall include also the collection of raw materials and equipment in commerce as above defined for the production, and the production therefrom, of any article or commodity to enter the flow of, or which affects, commercial intercourse with foreign nations or among the several States, or between the District of Columbia and any Territory of the United States and any State, Territory, or foreign nation, or between any insular possession or other place under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States and the District of Columbia or any foreign nation, or within the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or insular possession under the jurisdiction of the United States, and with the Indian tribes, and the sale or transportation of any article or commodity so produced in the course of commerce, as above defined, to retail dealers in any State, Territory, or possession of the United States, or the District of Columbia.

(b) "Corporation" shall include any body corporate, association, trust, joint-stock company, limited partnership, or syndicate.

(c) "State", unless the context otherwise indicates, shall mean any one of the several States, Hawaii, Alaska, Puerto Rico, the Virgin Islands of the United States, or the District of Columbia.

(d) "Books and records" shall include any books, records, correspondence, papers, documents, memoranda, contracts, and other written matter.

(e) "Subsidiary" shall mean any corporation subject to the direct or indirect actual or legal control of any other corporation, whether by stock company or in any other manner.

(f) "Affiliate" shall mean any corporation which has a subsidiary.
(g) "Commission" shall mean the Federal Trade Commission.
(h) "Licensee" shall mean a corporation to which a license has been issued under this Act.

(i) "Applicant" shall mean a corporation which has made application for a license under this Act.

(j) A corporation shall be deemed to be engaged in commerce if it is engaged in commerce or if, for the purpose of controlling or influencing the management of any corporation engaged in commerce, it owns stock or securities of such corporation, or if by means of any advance, loan, voting trust or trusts, holding company or companies, or any device or means, direct or indirect, it exercises or attempts to exercise direction or control over a corporation engaged in commerce.

ISSUANCE OF LICENSES

SEC. 3. (a) On and after January 1, —, it shall be unlawful for any corporation to engage, directly or indirectly, in commerce without a license issued by the Commission under this Act, if such corporation by itself or in consolidation with its subsidiaries has had, at any time during the three years immediately preceding the time when it so engages in commerce, gross assets the value of which on the books of the corporation and its subsidiaries exceeded \$100,000.

(b) Before any license shall be issued under this Act the applicant shall file with the Commission a sworn statement with respect to its operations, which shall include information concerning its organization and financial structure; the character of its transactions in interstate or foreign commerce; the terms, position, rights, and privileges of the different classes of its securities outstanding; the terms on which its securities have been offered to the public or otherwise; the property taken by the applicant at the time of its organization and the consideration paid therefor in money or otherwise; its bonded indebtedness and the interests of the promoters therein; the personnel and salaries of its management; its charter and bylaws; the number and local distribution of its stockholders; contracts made with promoters and with financial interests with respect to the organization or management of the applicant and service contracts; special legislation relating to the applicant; the names and post office addresses of its officers and board of directors; the amount of each class of stock held by each of its officers and each member of its board of directors; the amount of stock held by the applicant in other corporations and when acquired; and such further information with respect to the operations of the applicant as the Commission may, by regulation, require as necessary or appropriate in the public interest or for the protection of investors. The applicant shall also file with the Commission a certificate duly authenticated by its officers that by vote of its board of directors it intends to engage in commerce subject to all Acts of Congress regulating such commerce or limiting or affecting the rights, powers, or duties of corporations or associations engaged therein.

(c) Application for such licenses shall be made, and the licenses shall be issued, in such manner as the Commission, shall, by regulation, prescribe. Each such license shall be effective from the date specified therein, and shall continue in effect until revoked.

(d) The Commission shall by order deny the application for a license of any applicant corporation which fails to comply with the provisions of subsection (b) of this section.

(e) Every corporation engaged in commerce and subject to this Act shall have power under its charter, by mere act of its board of directors, to accept any charter restriction that Congress imposes as a condition of its right to engage in such commerce, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

UNLAWFUL COMBINATION NOT ENTITLED TO LICENSE

SEC. 4. (a) No applicant shall be entitled to a license under this Act if it is an unlawful trust or combination in violation of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, including any amendment of such laws, if it is a party to any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of commerce in violation of such laws, or if it is monopolizing, or attempting to monopolize, or combining or conspiring with any other person to monopolize, any part of such commerce.

(b) If the Commission finds, after notice and hearing, that an applicant, by reason of this section, is not entitled to a license, it shall by order deny the application of such applicant.

(c) Any order of the Commission denying an application for a license by reason of this section shall be subject to judicial review in the manner provided in section 12 of this Act, and the review of such order shall be given precedence by the court over other pending matters and shall be in every way expedited.

CONDITIONS OF LICENSES

Sec. 5. Every license issued under this Act shall contain, and the licensee shall be subject to, the following conditions:

(a) That no female employee of the licensee who performs services approximately equivalent to those performed by male employees shall be discriminated against as to rates of pay or in rights granted or in any other manner.

(b) That (1) no person less than sixteen years of age shall be employed by the licensee; and that (2) no person less than eighteen years of age shall be employed by it in a hazardous occupation, or at any other time than between the hours of 7 antemeridian and 7 postmeridian.

(c) That employees of the licensee shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

(d) That upon order of the Commission, issued after notice to the licensee and opportunity for hearing, the licensee will refrain from dishonest or fraudulent trade practices, from unfair methods of competition which have been so defined in the courts of the United States or established by orders of the Commission made subject to judicial review, from violations of the antitrust laws as described in section 4 (a) of this Act, and from monopolizing, or attempting to monopolize, or combining or conspiring with any other person to monopolize, any part of commerce.

(e) That, in the case of any licensee organized after the date of enactment of this Act, it shall have its chief place of business and its executive offices, and the meetings of its board of directors or trustees shall be regularly held, within the State, Territory, or possession under the laws of which it is organized, and if organized under the laws of the District of Columbia it shall have its chief place of business and its executive offices, and the meetings of its board of directors or trustees shall be regularly held, in the said District.

(f) That the licensee shall have only such powers as are incidental to the business in which it is authorized to engage, and these powers shall not include any power to hold the stock of any other corporation unless it had such power on the date of the enactment of this Act or unless such other corporation is a subsidiary of the licensee, nor shall it have any power outside of the jurisdiction of its incorporation which it does not have within such jurisdiction. A full accounting of the affairs of such subsidiary corporation shall be made annually to the stockholders of the licensee, and a full accounting of the affairs of the licensee shall be made annually to the stockholders of such subsidiary corporation, and a duly certified copy of all such accounts shall be filed with the Commission.

(g) That all stockholders or members of the licensee shall have an equal right to vote the number of shares held by them, respectively, at all stockholders' meetings and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder, notwithstanding any provision of its charter for the issuance of nonvoting stock: *Provided*, That no other corporation or association shall be entitled to any such vote or voice, directly or indirectly, at any meeting of its stockholders, except that the stockholders of any such other corporation or association shall be entitled to cast their pro rata share of the stockholding of such other corporation. The owners of all nonvoting stock that may heretofore have been issued shall be notified by the licensee of this provision.

(h) That no bonus or commission or emolument of any kind or character in addition to his regular compensation shall be paid to any officer or director of the licensee except by vote of the stockholders at a regularly called meeting.

(i) That the stock of the licensee shall be fully paid, or payable in cash or in property or in services where the issuance of such stock for such property services has been authorized upon application to a competent court and under its order finding upon competent and specific proof that such stock has been or is to be issued on a fair valuation of such property or services.

(j) That any stockholder of the licensee may deliver his proxy to any person who may be certified by the Civil Service Commission, in accordance with the

provisions of section 20 of this Act, as a certified corporation representative; that such corporation representative shall be entitled to all the rights and privileges of the stockholder whose proxy he may hold with respect to the examination of the books and affairs of the licensee and the transaction of business at any meeting of the stockholders or any meeting of the board of directors in which said stockholder might himself participate; and that every licensee to which this paragraph is applicable shall notify all of its stockholders of the provisions of this paragraph.

(k) That the licensee shall be subject to, comply with, and accept any requirement not inconsistent with the laws of the United States that may be made by the State of its incorporation, and any requirement that may be imposed by the Congress as a condition of its right to engage in commerce.

SEC. 6. Unless otherwise specified in a license every condition contained therein shall become effective upon the effective date of the license. The Commission may at the time of the issuance of any license provide therein that any or all of its conditions shall become effective at any time within three months after such date.

COMPETING CORPORATIONS

SEC. 7. It shall be unlawful and an unfair method of competition within the meaning of the Federal Trade Commission Act, approved September 26, 1914, for any corporation engaged in commerce to carry on such commerce without conforming to the requirements specified in the licensing conditions stated in section 5 of this Act, where the effect in or upon commerce may be to give to corporations not so conforming a substantial advantage in competition with licensees under this Act.

Whenever the Commission shall have reason to believe that any corporation engaged in commerce, which is not licensed under this Act, is not conforming to the conditions of fair competition above required, and that any article or commodity is being produced, manufactured, processed, or distributed to retail dealers by such corporation in such manner as to interfere with the effective handling of similar articles or commodities by any licensee, or in such manner as to give to the articles or commodities so produced, manufactured, processed, or distributed competitive advantages over similar articles or commodities handled by licensees, thereby tending to defeat the purposes of this Act, and if it shall appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public, it shall issue and serve upon such corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon the day and at a place therein fixed, at least thirty days after the service of such complaint. The corporation so complained of shall have a right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission subjecting it to the provisions of this Act. Any person may make application, and upon good cause shown may be allowed by the Commission, to intervene and appear in said proceedings by counsel or in person. If upon such hearing the Commission finds that the charges specified in such complaint are supported by evidence it shall issue and cause to be served on such corporation an order subjecting it to the provisions of this Act in the same manner and with like effect as corporations required by this Act to be licensed. Findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part, any order issued by it under this section, and any such order may, upon petition of the corporation to which such order is directed, be reviewed, in the same manner, so far as applicable, as is provided in the case of an order issued by the Commission under section 5 of the Federal Trade Commission Act, as amended.

REVOCATION OF LICENSES

SEC. 8. (a) If any licensee violates any effective condition of its license, such license shall be revoked in the manner hereinafter set forth.

(b) If the Commission has reason to believe that any licensee has violated any such provision of its license, the Commission shall afford such licensee an opportunity for hearing. If, after affording such opportunity for hearing, the Commission is of the opinion that such violation has occurred, the Commission shall, unless there have been presented to the Commission satisfactory evidence of the willingness and capacity of the licensee to comply with the conditions contained in such license, and of the making of suitable restitution, as determined by the Commission, by such licensee to parties adversely affected by the violation

of such condition, notify the Attorney General of its opinion and the facts upon which it is based.

(c) Upon receipt of notice from the Commission under this section, it shall be the duty of the Attorney General to institute proceedings against such licensee, and any of its officers and directors responsible for the alleged violation, for the revocation of such license. Such proceedings may be brought in the district court of the United States for any district in which such licensee may be found or in which it carries on business; and the several district courts of the United States are hereby vested with jurisdiction to revoke licenses in such proceedings. In any such proceeding in which a license is revoked, the court may order that any officer or director of the licensee responsible for the violation of the conditions of its license shall not serve, until after the expiration of such period as the court may fix as an officer or director of a corporation engaged in commerce.

REISSUING OF LICENSES

SEC. 9. The Commission shall reissue any revoked license upon presentation of satisfactory evidence of the willingness and capacity of the licensee applying for reissuance to comply with the conditions contained in such license, and upon the making of suitable restitution as determined by the Commission by such licensee to parties adversely affected by the violation for which the license was revoked.

TEMPORARY LICENSES

SEC. 10. Every applicant which was organized prior to the date of enactment of this Act shall be deemed to have a temporary license to engage in commerce from the date it files its initial application for a license in accordance with the provisions of this Act until the date such license is issued or the order of the Commission denying the application becomes final. The Commission may, in its discretion, issue a temporary license to an applicant organized after the date of enactment of this Act upon the filing of its initial application for a license and issue a temporary license to any applicant upon the filing of an application other than its initial application for a license, or upon the filing of an application for the reissuance of a license; and any temporary license so issued shall be effective until such application is granted or the order denying such application becomes final.

EFFECTIVE TIME OF ORDERS

SEC. 11. An order of the Commission under this Act shall become effective at the time specified in the order, except that an order denying an application for a license shall not become effective in less than 60 days from the time of the issuance of the order. An order of the Commission shall become final upon the expiration of the time allowed for filing a petition for judicial review of such order, if no such petition has been filed within such time.

JUDICIAL REVIEW

SEC. 12. (a) Any party aggrieved by any action or order of the Commission under this Act may petition the circuit court of appeals of the United States in any circuit in which such party resides or transacts business for a review of said action or order of the Commission. A copy of said petition shall forthwith be served upon the Commission and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Commission, including the pleading and testimony upon which the action complained of was based and the findings and order of the Commission. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the action or order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. At the earliest convenient time the court shall hear and determine the appeal upon the record before it and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and, in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact

by the Commission, if supported by evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission to be made a part of the transcript. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, unless it shall clearly appear that the findings of the Commission are arbitrary or capricious, and shall file its recommendations, if any, for the modification or setting aside of its original action. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 230 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 340 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

INVESTIGATIONS

SEC. 13. (a) The Commission may require any licensee to submit accurate reports, truthful and responsible answers to interrogatories, and to keep such accounts or systems of accounts, and to permit such access to all books and records within the control of such licensee (including books and records of any affiliate or subsidiary) as the Commission may deem necessary to effectuate the purposes of this Act.

(b) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any corporation has violated any provision of this Act or any condition of any license, or whether any licensee under this Act is effectuating the declared policy of this Act, and may require or permit any corporation to file with it a statement in writing, under oath or otherwise, as it shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing, approval, issuance, or enforcement of any license, rule, or regulation thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(c) The Commission, for the purpose of any such investigation or any other proceeding under this Act, and for the purpose of exercising its functions and powers under this Act, is empowered to administer oaths and affirmations and to require by subpoena the attendance and testimony of licensees, their officers, agents, creditors, and business associates, and the production of all their books and records relating to any matter under investigation. Such attendance of licensees, their officers, agents, creditors, and business associates, as witnesses and the production of any such books and records may be required from any place in the United States at any designated place of hearing.

(d) In case of contumacy by, or refusal to obey a subpoena issued to any licensee, its officers, agents, creditors, or business associates, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such licensee or such person under subpoena resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books and records. Such court may issue an order requiring such licensee or person to appear before the Commission, there to produce books and records, if so ordered, or to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such licensee or person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books and records, if in his power so to do, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or imprisonment for a term of not more than one year, or both.

(e) No person shall be excused from attending and testifying or from producing books and records before the Commission or in obedience to the subpoena of the Commission or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(f) The several departments and bureaus of the Government shall furnish the Commission, upon request, all records, papers, and information in their possession relating to any of the provisions of this Act.

SEC. 14. This Act shall not apply to any common carrier of property, persons, or messages, any corporation, insofar as engaged in radio broadcasting, subject to the Communications Act of 1934, to any banking corporation, any insurance corporation, any corporation engaged in publishing newspapers, magazines, or books, any corporation organized under the China Trade Act of 1922, or any corporation the majority of the stock of which is held by the United States, unless such corporation hereinbefore exempted shall, through stock ownership, voting trust or trusts, holding company or companies, or by any other device or means, direct or indirect, acquire, for the purpose of controlling or influencing the management of any corporation subject to this Act, any interest in or control of any such corporation subject to this Act, in which case this Act shall apply to such corporation hereinbefore exempted.

RULES, REGULATIONS, AND FEES

SEC. 15. The Commission is authorized to prescribe, amend, and modify such rules and regulations, not inconsistent with the provisions of this Act, as may be necessary to carry out the purposes of this Act. The Commission shall prescribe and collect such fees for the issuance of licenses as may be reasonably necessary to cover the costs thereof, and the moneys so collected shall be covered into the Treasury as miscellaneous receipts.

MISCELLANEOUS PROVISIONS

SEC. 16. Every contract made in violation of this Act shall be void, and no corporation or association shall bring or maintain any suit or proceeding in any court of the United States unless it is organized, conducted, and managed as required by the conditions imposed in section 5 of this Act, but this provision shall not prevent the removal to any court of the United States of any such suit or proceeding when the petition for such removal is filed by any party otherwise entitled to be heard in such court.

SEC. 17. No person or persons shall form, operate, or act as or for a corporation or association for the purpose or with the effect of violating this Act, or conspire thereto and of himself or by a co-conspirator do any act or thing to effect such conspiracy.

SEC. 18. Every corporation, association, or person violating any of the provisions of this Act shall, upon conviction thereof, in the case of a corporation or an association, be subject to a fine not exceeding — per centum of its capital stock, or to a perpetual injunction against engaging in commerce, or both, and, in the case of a person, shall be subject to a fine not exceeding \$10,000, and, if the violation is willful with intent to defraud or to violate any Act of Congress to such fine and to imprisonment for not exceeding five years.

SEC. 19. No person shall be eligible to serve as an officer or director of any licensee unless he is an actual owner of stock in the licensee. Unless otherwise provided herein, no director or officer of a licensee shall be a stockholder or employee of any other corporation engaged in the same business, nor shall any such director or officer be a director, officer, or employee of any corporation which has advanced or loaned money or property to such licensee. Every officer and director of any licensee shall be a trustee of the stockholders of such licensee and shall be liable to such stockholders in actual and punitive damages for any money or property that may be paid or transferred to any other corporation in which he may be an officer or director or in which he may own more than 5 per centum of the corporate stock or other securities. No officer or director of any licensee shall, directly or indirectly, or by any device whatsoever take any profit to him-

self as a result of the trust reposed in him save only such compensation as may be regularly awarded to him by vote of the board of directors.

SEC. 20. The Civil Service Commission is authorized and directed to issue certificates, upon application, to persons whom it finds to be properly qualified and familiar with corporation and commercial law and corporate accounting, authorizing such persons to act as certified corporation representatives for the purposes of this Act. The Civil Service Commission is authorized to prescribe such rules and regulations, and to conduct such examinations as may be necessary for the purposes of this section. The Civil Service Commission shall prescribe and collect such fees for such examinations as may be reasonably necessary to cover the costs thereof, and the moneys so collected shall be covered into the Treasury as miscellaneous receipts. The Civil Service Commission may, for cause, after notice and hearing, revoke any such certificate; and if any person who has not received such a certificate, or whose certificate shall have been revoked, shall hold himself out to act as a certified corporation representative under this Act, he shall be deemed guilty of a misdemeanor; and, upon conviction thereof by any court of record of the jurisdiction in which the offense was committed, he shall be fined not more than \$1,000 for each such offense. The Civil Service Commission shall not establish any requirement under this section which will prevent the issuance of certificates to persons other than attorneys at law. Nothing in this Act shall be construed to prohibit a person other than a certified corporation representative from acting as the proxy of a stockholder in any corporation.

SEC. 21. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

SEC. 22. The right to alter, amend, or repeal this Act, or any part thereof, is hereby expressly reserved.

SEC. 23. This Act may be cited as the "Corporation Licensing Act of 1938".

Amend the title so as to read: "A bill to regulate interstate and foreign commerce by prescribing the conditions under which corporations may engage in such commerce, to provide for and define additional powers and duties of the Federal Trade Commission, and for other purposes."

Senator O'MAHONEY. I should like to have those present and who desire to be heard indicate at the present time, so the committee may be able to organize the hearings. I understand there are two representatives here from the National Association of Manufacturers. One is Mr. Cunningham. I understand the other is detained before another committee. Are there any other spokesmen here in behalf of the National Manufacturers Association?

Mr. JOHN D. BATTLE. Mr. Chairman, I represent the National Coal Association, and would like to be heard very briefly.

Senator O'MAHONEY. Is there anyone else?

Mr. BEN C. MARSH. I represent the People's Lobby, and am in favor of the principle of this bill.

Senator O'MAHONEY. I am glad to hear you make that announcement. Are there any other persons here who desire to be heard on either side?

I have requested Mr. Robert O'Brien of the Securities and Exchange Commission staff to appear here this morning and discuss for the benefit of the committee some of the facts with relation to corporate organizations. Perhaps I might state that Mr. O'Brien is not here as an advocate or opponent of the measure, but at our invitation to develop the facts with respect to the effect of corporate organizations upon interstate commerce, as developed by the investigation of the Securities and Exchange Commission.

Mr. O'Brien, will you be good enough to take the stand?

**STATEMENT OF ROBERT H. O'BRIEN, ASSISTANT DIRECTOR,
REGISTRATION DIVISION, SECURITIES AND EXCHANGE
COMMISSION**

Mr. O'BRIEN. That is correct, Senator; not alone, however, as the product of our investigations, but likewise facts which are stated in registration statements filed under the provisions of the Securities Act and the Securities and Exchange Act.

Senator O'MAHONEY. Please give your name to the reporter, Mr. O'Brien.

Mr. O'BRIEN. Robert H. O'Brien.

Senator O'MAHONEY. And the position you occupy.

Mr. O'BRIEN. Assistant Director of the Registration Division of the Securities and Exchange Commission.

Senator O'MAHONEY. What are your duties in that capacity?

Mr. O'BRIEN. My duties are to supervise the examination and make recommendations as to the disposal of approximately one-half of the registration statements filed under the Securities Act of 1933. I also come in contact collaterally with problems which arise under the Securities and Exchange Act of 1934, although I have nothing to do with the disposition of those cases.

Senator AUSTIN. Is your work divided geographically?

Mr. O'BRIEN. No; it is not. I might add that it is not divided on the basis of any classification of companies into types.

Senator O'MAHONEY. You may proceed, Mr. O'Brien, with your statement.

Mr. O'BRIEN. May I preface what I have to say by stating that this material has been somewhat hastily assembled, and covers only a portion of what we have in the Securities and Exchange Commission.

The first thing that may be of interest, in connection with a bill of the kind which the committee is considering is the general practice of corporations with respect to considering reports to securities holders, for the purpose of informing them as to the progress and condition of the enterprise. Many registration statements filed under the Securities Act show that a large number of corporations make no reports whatever to their securities holders. In many instances in which reports are made, the content of the reports is not such as to inform the persons to whom the reports are directed of the true condition of the business. There are either omissions to state certain facts which are of vital importance in determining the exact position of the company financially and its position in the industry in which it is engaged in business, or certain facts which are affirmatively stated may be misstated or stated in a misleading fashion.

Senator AUSTIN. Will you permit a question at this point?

Mr. O'BRIEN. Surely.

Senator AUSTIN. Does the Commission make any recommendation for uniformity in the style of reports by corporations to anybody, to the Commission, to the stockholders, or to anyone else?

Mr. O'BRIEN. We do have authority to prescribe the form and content of certain reports required to be filed with us, but that is by no means a complete covering.

Senator AUSTIN. Is that because of the law or because of the administration of the law?

Mr. O'BRIEN. I would not say it is either of those.

Senator AUSTIN. It is a matter that could be easily remedied; is it not?

Mr. O'BRIEN. Our jurisdiction under the Securities and Exchange Act extends only to companies whose securities are listed on a national exchange. The 1933 Securities Act extends only to the initial public offering and distribution of securities in interstate commerce. From that you can perceive how our jurisdiction is limited under those two statutes. I think I should amplify what I said in answering your last question, by saying that we have no power whatsoever to prescribe the form which reports to stockholders shall take.

Senator O'MAHONEY. You do not have any power over the corporate structure of the registrant, but to what extent does your power go?

Mr. O'BRIEN. I might say in general terms that we have no power whatsoever over the internal affairs of corporations, whether we think they are conducted wisely or unwisely, nor do we have any authority to prescribe the form of any corporation's capital structure. Our act only requires that the material facts relating to the enterprise be stated truthfully and completely, whether they be good or bad, and then only in those instances I have described where we have jurisdiction.

Senator BORAH. You have no control or jurisdiction over the terms or conditions of granting a charter to a corporation?

Mr. O'BRIEN. None whatsoever. We are not able to dictate or even suggest the terms of the charter.

Senator O'MAHONEY. Mr. O'Brien, you may proceed with your statement.

Mr. O'BRIEN. Another set of cases which come before us quite frequently are those involving the issuance of stock in exchange for services or property, either at or shortly after the organization of the corporation. The usual thing, although it is not 100 percent uniform, is for the promoters who bring the corporation into existence to act, after incorporation, as the board of directors, or be in a position to control or dominate the persons chosen to be members of the board of directors. The property which has been acquired by the promoters or in their name and behalf is transferred to the corporation in exchange for stock. Our experience in that respect is that in many cases, perhaps a majority of the cases, the primary motive of those promoters, who stand on both sides of the transaction, is to obtain and retain control of the corporation. Shares are issued without regard to the value of the assets which are turned over to the corporation. We had one very striking case which illustrates this practice.

It may, at the same time, clarify somewhat the nature of our approach to these problems and indicate the extent of our authority under the statute.

A balance sheet was filed containing an item of property in the amount of \$71,000. The amount \$71,000 represented the amount due on a mortgage held by the vendor of the property \$26,000 and the aggregate par value of 45,000 shares of stock issued to the promoter. We inquired into the nature of the transaction through which the property was acquired and as a result concluded that only \$26,000 was properly allocable to property. The balance of \$45,000, represented by 45,000 shares of \$1 par stock was properly allocable to something

else, even though it had been included in the property account. We raised the question of the propriety of including the 45,000 shares in the property account. The balance sheet was then revised to state that the 45,000 shares had been issued to the promoters in exchange for services rendered to the corporation.

The Commission held a hearing under section 8 to determine whether the representation that 45,000 shares of \$1 par stock had been issued for services was true. The evidence established that the services were of a negligible character. The time spent and the ability of those who had rendered the services were not such as to indicate that anything closely approaching \$45,000 in value had been received by the corporation. The Commission took the position that because of the great disparity between the aggregate par of the stock and the value of the services rendered to the corporation, a substantial portion of those shares which were represented to have been issued in exchange for services had actually been given to the promoters. It held that the corporation had not received \$45,000 in value, as was represented but something substantially less than \$45,000, and that consequently a large part of the stock issued constituted a gift to the promoters.

Senator AUSTIN. May I ask you a question at this point?

Mr. O'BRIEN. Yes.

Senator AUSTIN. Do you happen to recall whether you investigated the authority of those promoters, or those who signed the articles of incorporation, to make such an issue without an affidavit filed with the Secretary of State or commissioner of corporations of that State in which it was chartered, showing that a part of the stock was issued for services, and what part was so issued, and requiring good faith in the affidavit to support that issue? Do you recall whether you inquired into that?

Mr. O'BRIEN. I will answer that in this way: I do not even recall the State laws under which that particular corporation was organized. I do not know offhand any State corporation law which would require something of the nature that you now suggest.

Senator AUSTIN. You do not know of any?

Mr. O'BRIEN. I do not know of any, in those precise terms. I know of general procedures of that kind which are provided for in State corporation acts. I would say, however, that that type of case occurs frequently in States whose laws contain general provisions of that character, if not exactly such as you have described.

Senator O'MAHONEY. Mr. O'Brien, is it not a fact that practically all the corporations which register with the Securities and Exchange Commission are corporations which are desirous of selling their stock to the public?

Mr. O'BRIEN. That is correct. Under the 1933 act that is the whole of it.

Senator O'MAHONEY. So for the purposes of this discussion and the effect of this bill, there are two types of corporations, are there not: No. 1, the corporation which is closely held, the stock of which is not offered to the public for sale, the corporation therefore being owned by those who manage it; and that there is a second type, namely, the ones with which the Securities and Exchange Commission has been primarily dealing, the stock of which is more or less widely distributed among the people at large, so the stockholders are not in the position,

without intervention of some public agency, to determine to what extent their rights as stockholders or investors are protected in the corporation? Is that correct?

Mr. O'BRIEN. Well, if you would restate that, Senator.

Senator O'MAHONEY. Perhaps I have made the sentence too long. For the purposes of the discussion before this committee and with respect to your testimony, are there not two types of corporations: The first type being the closely held corporation, the stock of which is not generally offered to the public; and the second being the type of corporation the stock of which is generally offered to the public? With the former the Securities and Exchange Commission has little or nothing to do. With the latter you have only such jurisdiction as arises when that stock is to be placed upon a public exchange for sale.

Mr. O'BRIEN. That is correct. Our jurisdiction only arises when they are about to make an offer of the stock in interstate commerce to the public.

Senator AUSTIN. May I ask you another question?

Mr. O'BRIEN. Yes.

Senator AUSTIN. Dealing only with the corporations where you have jurisdiction, have you not found that the statutes under which these corporations receive their charters require both a certificate of the capital paid in and an affidavit showing in detail for what that capital stock was originally issued, to be filed where the public has access to it in both the State office of either the Secretary of State or the Commissioner of Corporations, according to the type of government in that State, and also in the principal place of business where that corporation has its seat? Have you not found that to be true?

Mr. O'BRIEN. I could not answer that yes or no. There are 48 jurisdictions, and the variations are so great from the most extreme requirements on one side to the most lax requirements on the other side that a general statement on it would almost be bound to be inaccurate. I can say that certainly a substantial number of States do not require a procedure of the kind which you have in mind, which purports to set up effective protection against the sort of thing I have described. Our experience certainly shows that we have definite opinions of counsel that the procedure that has been followed by the corporations are in accordance with the State laws and the stock so issued is legally and validly issued and is validly outstanding.

Senator AUSTIN. You probably have a digest of all the different corporation laws of the different States, have you not?

Mr. O'BRIEN. I could not say we have anything like that, Senator. The nature of our work is such that, while we have built up a consistent procedure which is applicable in general terms to all cases that come before us, we concentrate and focus our attention upon the particular facts in the particular case when it arises. If we have a problem which involves a question of State law, we require an opinion of counsel covering the legality and validity of the issue of stock to be offered to the public.

If there appear to us to be certain elements in the situation which deserve close scrutiny, our staff will make a study of the State laws and determine whether or not we are in agreement with local counsel on the matter.

Senator O'MAHONEY. With respect to corporations which are not selling their stock upon a public exchange, but which are engaged in

interstate commerce and are selling their stock to the public at large, is there any public agency which has the power or authority to protect investors against the sale of worthless stock?

Mr. O'BRIEN. Our authority and power might attach under certain specific circumstances.

Senator O'MAHONEY. Under what circumstances?

Mr. O'BRIEN. The stock need not be listed. Just take a case, for example. If a corporation were organized under the laws of any State, and it desired to sell its stock generally or make an offer of it generally by the use of the facilities of interstate commerce or the mails, and no exemption is available—there are certain exemptions, for instance, intrastate offers—that corporation would have to file a registration statement with us which would have to become effective prior to offering the stock. It could meet all the requirements by supplying the material facts concerning the enterprise in the form of a registration statement and prospectus.

The things I have described are still possible under our act. In the case I described earlier, where a substantial portion of the securities were given to the promoters who controlled the corporation and stood on both sides of the transaction, the stock represented to have been issued for services, but actually issued as a gift was not returned to the corporation. We have no power to compel the return of the stock in such a case, but can only require that the facts with respect to the basis of issuance be stated in the registration statement and prospectus.

Senator BORAH. That corporation stands in precisely the same position, after you have required the statement of facts, except that you do have the facts?

Mr. O'BRIEN. That is right. If a person wants to buy stock in a corporation when a really substantial portion of its stock has been given away, that is up to him; but we have no power over it whatsoever.

Senator O'MAHONEY. We have a provision in this bill to which I should like to call your attention, subparagraph (i) of section 5.

Senator NORRIS. Before you take that up, let me ask a question?

Senator O'MAHONEY. Certainly.

Senator NORRIS. You have described these State laws as some of them being very lax and some very strict, differing so widely that you are unable to give a definition that will cover all of them. Where do you find that most of these corporations incorporate? If there is any difference, is it in States that are strict or States that are lax?

Mr. O'BRIEN. Of course, in States that are lax, Senator.

Senator O'MAHONEY. The provision of the bill to which I was going to call your attention is subparagraph (i) of section 5, containing the requirement:

That the stock of the licensee shall be fully paid, or payable in cash or in property or in services where the issuance of such stock for such property or services has been authorized upon application to a competent court and under its order finding upon competent and specific proof that such stock has been or is to be issued on a fair valuation of such property or services.

Would a provision of that kind have prevented the incident to which you have referred?

Mr. O'BRIEN. The objective of that provision is directed toward the practice I have described. I have not given it enough thought to express an opinion as to its effectiveness.

Senator O'MAHONEY. I think that is quite natural. It is dealing with a violation of what would seem to be good faith and ethics in the distribution of stock.

Mr. O'BRIEN. That is right. It is aimed to prevent that sort of practice.

Senator AUSTIN. Do you not find that in the States that you do know about the law provides for the recovery from any person who has received a share of stock without consideration, of the full face value of that stock where it has no par value?

Mr. O'BRIEN. Do you mean in the event of stock being issued which is not fully paid?

Senator AUSTIN. Yes.

Mr. O'BRIEN. That is right. That involves, of course, a lawsuit.

Senator O'MAHONEY. You may proceed with your statement.

Mr. O'BRIEN. The retention of control by the promotive group, the dominant controlling interest, is illustrated by those corporations which adopt a capital structure providing for two classes of stock. Frequently we have seen capital structures with a preferred stock or a senior stock, a stock with par or without par, for example, \$5 par. The charter may authorize the issuance of 100,000 shares of this class. That would mean the capital stock of this class being sold for an aggregate payment of \$500,000. That would represent the capital contribution of that class. Frequently that class has no voting power and no voice in the management. They may or may not be entitled in liquidation to an amount in excess of par.

The other class may be the same number of shares, without par, with a stated value of only a small amount, perhaps a mill or a cent, so that the promotional group can obtain control of the corporation by contribution of \$100 or \$1,000 as against the contribution by the other class of \$500,000.

That represents a procedure which is available under State laws for acquiring and maintaining control of a corporation by a negligible contribution to the capital of the corporation.

That brings up a procedure which is possible and available under many of the State laws to limit the effectiveness of rating power which is apparently expressly granted by the charter. It is somewhat different from the case I have just mentioned where one class of stockholders has contributed the major portion of the capital but by the express terms of the charter has no voice in the management. We have in our records the history of one case, a corporation organized in 1932, the purpose being to obtain control of the assets of certain other corporations. In 1935 this particular company sought to gain control of the assets of 12 corporations. Eight of those corporations were organized under the laws of Maryland, and four were organized under the laws of Delaware. The corporation which sought to do these things had control of each of the 12 corporations, the 8 organized in Maryland and the 4 organized in Delaware. As to the Delaware corporations a merger appeared to be the most effective means of achieving the desired end.

Senator O'MAHONEY. Were they all engaged in the same type of business?

Mr. O'BRIEN. They were all engaged in the same general type of business.

Senator NORRIS. That was really the organization of a holding company to own all the subsidiary corporations, was it not?

Mr. O'BRIEN. It was a little different from that. I have not stated all the facts. The common parent, the Delaware corporation, proposed to merge the four Delaware corporations, the parent to survive, and consolidate the eight Maryland companies so that a parent-subsidary relationship between two corporations would be the final result. That is, the Delaware corporation which instituted the procedure and survived the merger would wind up as the parent of the Maryland corporation resulting from the consolidation of the eight Maryland corporations.

Each of these corporations had two classes of stock, preferred and common. A majority of the common stock in each of the corporations was held by the Delaware parent corporation. A substantial amount of unpaid dividends had accrued on the preferred stock outstanding.

The law of Delaware provided that a merger could be effected by a vote of a majority of the holders of stock outstanding in the corporations concerned. Under that law the preferred stockholders were certainly in an inferior position so far as protection of their position was concerned, because the common stock held by the parent corporation which had designed the whole transaction could outvote the preferred. The common holders did so, with the result that these accruals were wiped out and the priorities were diminished.

Senator O'MAHONEY. So that under the charter the common stockholders, by a majority vote, could in effect change the contract under which the preferred stockholders originally acquired their stock. Is not that the effect of the situation you have described?

Mr. O'BRIEN. That is the effect. I will put it this way: The result was that the preferred stockholders were taken from a superior position to an inferior position with the accruals whittled down, and they could not exercise any effective means of preventing it. It might be mentioned at the same time that it was questionable whether there were any assets allocable to the common stock. I do not recall the exact situation as to all four corporations, but there were two of them in which the common stock was really under water.

Senator BORAH. Where was that parent company organized?

Mr. O'BRIEN. That was a Delaware corporation. There were four corporations merged into the Delaware corporation.

Senator O'MAHONEY. Where were they operating?

Mr. O'BRIEN. I do not recall that.

Senator AUSTIN. It gets down to this, does it not, that in the formation of the original corporation there was a creation of two classes of stock, those corporations in Maryland exercising such authority as the State of Maryland gave to them with respect to fixing the contract for the preferred stock, and that contract had to be offered to the public under the laws of Maryland; and that is likewise true of the Delaware statute? Is not that so?

Mr. O'BRIEN. That is true of the Delaware statute. The Maryland situation took a few little twists and turns that make it quite distinct from the Delaware situation.

Senator AUSTIN. The whole thing comes down to this, does it not: That the public is not apt to go to the Secretary of State or Commissioner of Corporations, or even to the office of the town clerk or city

clerk in the principal place of business of that corporation, to find out what that contract was in respect to the purchase of preferred stock? Is that not true?

Mr. O'BRIEN. Do you mean the public has not read and studied the contract?

Senator AUSTIN. The public has not used these means of ascertaining what they are buying.

Senator O'MAHONEY. In other words, the public has not read the fine print.

Senator AUSTIN. That is right.

Mr. O'BRIEN. You say the public does not take the trouble to determine what these means are. It is the question whether the means themselves afford sufficient protection. The mere fact of the public inquiring into those things would not be sufficient. It might make a difference in your judgment as to whether you would go into such a thing. Perhaps they have been careless. There may not be adequate information upon which to base a judgment.

Senator AUSTIN. But, so far as the law is concerned, a State has just as much the duty to prescribe the limitations and powers of a group of men in issuing preferred stock as the Federal Government would have under a similar statute. As a rule, do you not find the States exercise that power and prescribe the conditions upon which preferred stock shall be issued, with a view to informing the public that this class of stock has certain limitations, one being that it does not vote unless the dividends are in arrears a certain length of time and a certain number of dividends? It may have other conditions that would give the preferred stock the right to participate in the capital. In other words, all the terms of the contract with the owners of the preferred stock are provided by the Government of that State in which the corporation is set up, to be made public and available to the public. Is not that the general rule?

Mr. O'BRIEN. Yes. Of course, that raises a question as to the effectiveness of that means.

Senator AUSTIN. Exactly. That is the point I made in my first question.

Mr. O'BRIEN. I am sorry I did not understand you.

Senator AUSTIN. It seems to me the difficulty is that the public does not make use of the protection the State intends to afford the public with reference to the purchase of preferred stock.

Senator O'MAHONEY. How can the public make use of that?

Senator AUSTIN. By going to the secretary of state's office or the office of the commissioner of corporations or the office of the town or city clerk.

Senator O'MAHONEY. That is not quite as simple as it might appear. Inasmuch as you have raised that question, I think I may appropriately mention an incident which recently occurred. There is a Delaware corporation known as the Allied Stores Co., which operated in a dozen or more States, but not in the State of Delaware. It is chartered by the State of Delaware. It operates in the State of New York. It has such a situation as Mr. O'Brien has described. A certain amount of preferred stock was purchased by a citizen of New York in the belief that she had a superior position in the company, but under the Delaware charter by which the common stock was authorized, they were able to change the position of the preferred

stock. That was done, and certain accruals were in effect set aside.

This stockholder immediately brought suit in the State of New York, where the Allied Stores Co. was operating, where the stockholder purchased the stock. Finally, after the case had gone through all of the New York courts, the court of appeals decided that the stockholder in New York, purchasing stock in New York in a corporation engaged in business in New York, could not have the protection of the New York courts, but would have to bring suit in the State of Delaware to protect her rights when she thought she would have protection under the laws of New York.

Have you had instances of that kind, Mr. O'Brien?

Mr. O'BRIEN. Of that general character.

Senator O'MAHONEY. In those circumstances, Senator Austin, it would seem to me there is very little protection for the investor in the mere right to sue.

Senator AUSTIN. You are dealing with recovery of damages and I was dealing with the organization of corporations and the sale to the public of stock. It is just as easy to write a letter to the secretary of state of Delaware as it is to write a letter to somebody in Washington to ascertain what the contract is with respect to preferred stock issued by a corporation.

Senator O'MAHONEY. But it is much easier to bring suit in the Federal court in a district of California to enforce rights in dealing with a corporation than it is to come from California to Wilmington to file that suit in the State court:

You may proceed, Mr. O'Brien.

Mr. O'BRIEN. Another phase of that particular reorganization, as it relates to the question of the effectiveness of voting power, was the final acquisition by 1 company of control of the assets of the remaining 8 of the 12 companies, which was done under Maryland law. The Maryland statute provided that in the event of a consolidation a vote of two-thirds of each class of stockholders should be obtained. Superficially, at least, that statute appeared to provide substantially more protection than the Delaware statute, because in Maryland the common stockholders, despite their majority as stockholders, could not vote a plan unless acquiesced in by the vote of holders of two-thirds of the preferred stock. Ostensibly, the preferred holders were in a position to protect themselves against any unfair action of the common stock.

There was another provision in the Maryland law, however, that a corporation organized in Maryland might effect a consolidation upon a majority vote of its stockholders if such a provision were included in its charter. At the time the plan of consolidation was conceived there was no such provision in the charter of any of the eight Maryland corporations. The common stockholders of each corporation called a meeting and voted an amendment to the charter of each of the corporations to include such a provision. After doing so they were, of course, able to outvote the preferred stockholders and authorize the plan of consolidation.

The limitations upon the effectiveness of voting power under State statutes is well illustrated by this case. A question was raised as to the legality of that procedure under the Maryland law. An opinion of counsel was rendered that the procedure was entirely valid and legal.

Another phase of this general problem is the question of a corporate surplus which may be available as a source of dividend payments to any particular class or generally to any class of stockholders. A simple case is that of a corporation which has, for example, a capital structure consisting of 100,000 shares of preferred stock, \$5 par, liquidating at \$10 and offered to the public at \$12; and 100,000 shares of common stock of \$1 par. Under State law the corporation can set up a capital-stock liability of \$500,000 for the preferred and allocate \$200,000, the amount received in excess of par on sale of the preferred to paid-in surplus. The corporation then has a capital-stock liability of \$500,000 for the preferred, and \$100,000 for the common stock both at par, and a surplus of \$700,000. If the corporation were to liquidate immediately, and there were no other claims, the preferred stockholders would be entitled, under the charter, to a million dollars or \$200,000 less than their contribution.

The question has been raised by the Commission as to the propriety and legality, under various State laws, of using the \$700,000 surplus contributed by the preferred stock as a source from which to make dividend payments on the common stock. The opinion has been quite uniformly expressed by reputable counsel that the \$700,000 contributed by the preferred stockholders, and which might be said to be a cushion against the liquidation rights, could properly and legally be so used.

Senator O'MAHONEY. What can you do about that?

Mr. O'BRIEN. All we can do is to insist that it be quite emphatically stated in the registration statement and prospectus, together with an expression of opinion by counsel, that the surplus either is or is not restricted in favor of the preferred holders who contributed that capital.

Senator O'MAHONEY. Nothing you can do can in any way affect the power of the corporation to do that?

Mr. O'BRIEN. That is right.

Senator O'MAHONEY. When the State law permits the creation of a corporation to engage in interstate commerce and sell its securities throughout the United States, and when the State law authorizes such a corporation to sell preferred stock to investors throughout the land and use the proceeds of that sale for the payment of dividends to common-stock holders, there is nothing the Securities and Exchange Commission can do about it.

Mr. O'BRIEN. That is correct. State laws are set up on that basis.

Senator AUSTIN. We finally get down to the place where we find this, do we not: There is not a State in this Union that does not prohibit, and support the prohibition by penalty, the distribution of the capital of a corporation in the form of dividends. Is that not so?

Mr. O'BRIEN. I would say perhaps yes to that in many instances, but I do not think that bears upon one thing which has been described.

Senator AUSTIN. Do you know of any State in this Union that permits the payment of dividends out of paid-in surplus?

Mr. O'BRIEN. I would say that according to our experience in the Commission, which is based upon quite a large number of cases in which a question of that sort is presented, reputable lawyers over the country have stated that in their opinion it is legal to pay dividends

out of such a surplus. I know of only one instance—and I do not purport to state that is the only instance, because others may have escaped my notice—where counsel expressed the opinion that a court of equity might enjoin the payment of such dividends. In respect to stockholders who have contributed that capital or paid-in surplus, there is no remedy even in a court of equity to prevent that payment.

Senator AUSTIN. When you get through with all the lawyer's opinions, you must go to the statutes to find out what their rights are in any State, must you not?

Mr. O'BRIEN. That is correct.

Senator BORAH. Under the practice you stated to Senator O'Mahoney, with reference to the stockholders in New York, a stockholder in California would have to go to Delaware to fight that out?

Mr. O'BRIEN. Yes; and that suggests another thing which is probably germane to this question—the manner in which notices of stockholders' meetings are given, the place selected for the holding of the meeting, and the provisions of the charter governing what shall constitute a quorum, all of which are frequently used to limit the effectiveness of action by stockholders, and, we are told, legally. The charter often selects an out-of-the-way place for meetings which makes it inconvenient and expensive for the stockholders to attend. In many State laws there is no effective requirement that the stockholders should be made fully aware of what is to be considered. The form of notice is often inadequate to give such information. That, added to the fact that only a limited number need attend to constitute a quorum to take final effective action indicate means employed to abridge the rights of stockholders which may be expressly given in the charter.

Senator NORRIS. In your opinion, what is the reason given why there should be such a maze of corporations intertwining with each other in one State or another? What is the object of it? Who gains by it and who loses by it?

Mr. O'BRIEN. I would not like to answer that question, because it involves so much that I have not carefully considered. I would not like to answer it offhand.

Senator BORAH. It is rather apparent, generally speaking, who profits by these manipulations, is it not?

Mr. O'BRIEN. It is in most cases quite easy to put your finger on the person or group of persons which profit.

Senator O'MAHONEY. Is it not a matter of fact that in the opinion of most of the corporate lawyers of New York, capital raised by the sale of preferred stock and set up as paid-in-surplus may be distributed as dividends?

Mr. O'BRIEN. You say "most" of the lawyers in New York.

Senator O'MAHONEY. The substantial corporation lawyers of New York.

Mr. O'BRIEN. We have had opinions from substantial corporation lawyers of New York that that is a permissible procedure under the State statute.

Senator O'MAHONEY. And the condition developed by the question is merely this: that when a State with loose corporation laws permits the issuance of various kinds of stock with all kinds of voting powers, and lots of fine print, so to speak, printed on the back of the stock certificate expressing the contract, and perhaps some other fine

print in the corporation charter which is not expressed at all upon the stock certificate, it is practically impossible for an investor to protect himself, though the devices used by the promoters are illegal, because allowed by the charter issued by the State?

Mr. O'BRIEN. That is correct.

Senator O'MAHONEY. Leaving aside the question of the effectiveness of the means which are at the disposal of the shareholders, some action is necessary if the investors throughout the United States are actually to be protected. I shall not ask you to answer that question, because that might call for the expression of an opinion. You may proceed with your statement of the facts and circumstances which have come under your observation.

Mr. O'BRIEN. Going back for a moment to the case I described, where the one parent corporation effected the merger of four Delaware corporations, and the consolidation of eight Maryland corporations, that brings up another question, namely, the question of the migratory corporation. In that particular situation the State laws where the several corporations were organized could be accommodated to execution of the plan of reorganization desired. We have had some cases which show upon their face that the State law under which the corporation was organized and then doing business did not permit at all the particular procedure sought to be followed, or if permitted, only upon a vote of such a percentage of stockholders that their support was impossible to marshal. That is, enough votes of the class or classes of holders most vitally affected could not be obtained.

However, sufficient supporters to make a transfer of the assets of the corporation to a new corporation created under the laws of a different State, the laws of which in turn permitted the procedure which was originally desired by the group in favor of the plan could be secured. We have had some instances of that kind.

Senator AUSTIN. In such a case as that the stockholders are protected, are they not, if the evidence shows conclusively that the full consideration was paid by the purchaser of those assets to the original corporation; and all those stockholders not protected by the law could enjoin the transaction, or could recover in damages, or could even prosecute criminally the people engaged in such transactions. Is not that the condition?

Mr. O'BRIEN. Going back to the Delaware and Maryland case, it is interesting to note that after the amendments to the charters of the Maryland corporations providing for consolidation upon a majority vote, which was effected by vote of the common stock, holders of the majority of the preferred stock voted against the consolidation.

Senator AUSTIN. I do not think I made my question clear, but you do not need to pursue it further.

Mr. O'BRIEN. Just a few words on the question of compensation to officers and directors, merely in the way of a discussion of what we have seen. Usually there are disclosed three bases of compensation, or the compensation may be based upon a combination of all three. The first is a stated salary, so much money per year for the services of any given person. There may be in addition to the salary of a given amount per year, a provision for a bonus payment of a certain percent of gross or net sales.

In some cases options are given to officers and directors who vote the award of those options themselves, and the price even at the

time the option is given may be less than value of the stock. We have quite frequently seen examples of the use of that method.

We have had instances which showed compensations paid in the form of a stated salary, plus a bonus based upon gross or net income as defined in the particular situation, and in some cases plus options on stock, which result in additional compensation. There are numerous examples of that.

Senator O'MAHONEY. Has the Commission received any letters or complaints from reputable attorneys with respect to corporate practices in Delaware and Maryland?

Mr. O'BRIEN. I would not be competent to answer that. If they did come they would not come to my office. I would not say we have or have not.

Senator O'MAHONEY. Is there any other statement you care to make?

Mr. O'BRIEN. There is nothing more that I have in mind.

Senator O'MAHONEY. Will you be good enough to take up with the Commission the question I just asked you and, if there have been any such complaints with respect to the operation of the corporate laws of several of the States, I should be very glad to have you file some of them, such as you may with propriety make public, with the committee.

Mr. O'BRIEN. I should be glad to do that. As I said in the opening, the material used as a basis for my statement was prepared and assembled somewhat hastily. I will be glad, if the committee cares to have me do so, to revise that and file it with you.

Senator O'MAHONEY. I would be very glad to have you do that.

Senator KING. The statement is based upon matters brought to the attention of your organization?

Mr. O'BRIEN. That is correct. That I got from our public files, most of which were included in registration statements filed under the 1933 Securities Act and the 1934 Securities Exchange Act.

Senator KING. And it rests upon hearsay?

Mr. O'BRIEN. To that extent.

Senator O'MAHONEY. What power do you have over the issuance of stock rights?

Mr. O'BRIEN. In general terms, we have the same power as over other securities, namely, to assure disclosure of the material facts.

Senator O'MAHONEY. So it is legal in some States for corporations which issue stock rights to still be registered with the Securities and Exchange Commission?

Mr. O'BRIEN. That is correct.

Senator O'MAHONEY. You have no power to restrain the use of that device?

Mr. O'BRIEN. We have no power whatsoever over the form of the capital structure or the contents of any charter. Let me clarify that by saying that we have no power in the way of dictating that certain provisions be included and others be excluded. If, in our opinion, there are certain provisions of the charter which we regard as important which are not made sufficiently explicit in the registration statement and prospectus, we can insist that they be made so.

Senator O'MAHONEY. When the Mammoth Oil Co. was organized by Harry Sinclair to develop the Teapot Dome, a naval oil reserve in the State of Wyoming—

Senator KING (interposing). Was then or is now?

Senator O'MAHONEY. Was then and is now—the charter was issued by the State of Delaware. It provided for two classes of stock, one of which had all the voting power, and the other had no voting power. As it happened, there were 200,000 shares of stock without voting power, and 500 shares of stock with voting power. Both types of stock were placed upon the market at the same price, so that those who were associated with Mr. Sinclair in the organization of the Mammoth Oil Co. acquired control of the entire capital stock by the contribution of only a very small amount of capital. Is there anything in the Securities and Exchange Act, or any other provision of law of which you know, by which a practice of that kind could be prevented in interstate commerce?

Mr. O'BRIEN. Under the Securities Act the only requirement would be that they disclose that and make it quite apparent to those persons to whom the stock is offered for sale.

Senator O'MAHONEY. There is nothing in the securities and exchange law which empowers any Federal agency to prohibit the exercise of corporate power in an oppressive and fraudulent manner, provided the State law permits the use of that device?

Mr. O'BRIEN. No, they only require that an adequate disclosure of the material facts concerning that structure be made.

Senator O'MAHONEY. Have you any idea how many corporations there are, if any, in the United States which offer their securities to the public, but which are not upon any exchange, and which are not subject to the Securities and Exchange Commission, except insofar as the mail provision goes?

Mr. O'BRIEN. Perhaps Commissioner Frank can give you that information.

Mr. JEROME N. FRANK (member of Securities and Exchange Commission). We can supply you with the approximate figure.

Senator O'MAHONEY. We will be glad to have you do that.

Mr. O'BRIEN. I might say in reference to the Sinclair Oil Co. that we had a registration statement filed a short time ago which showed a capital structure of 100,000 shares of class A stock and 100,000 shares of class B stock. The 100,000 shares of class B possessed all the voting power. The A stock had no voting power. That was offered to the public at \$2.50 a share, which would be a contribution of \$250,000. The B stock was all purchased by the promoters at one cent per share. It was 10,000 shares instead of 100,000. They obtained complete control for \$100, as compared with the contribution of \$250,000 by the class A stockholders.

Senator NORRIS. What was to prohibit the public from buying the 1-cent stock?

Mr. O'BRIEN. Nothing, except the matter of personal judgment.

Senator NORRIS. The promoters had to run the risk of being able to buy that stock themselves.

Mr. O'BRIEN. I do not quite understand that.

Senator O'MAHONEY. Senator Norris refers to the 1-cent stock.

Mr. O'BRIEN. It was not offered to the public.

Senator NORRIS. I understood you to say it was offered.

Mr. O'BRIEN. No. That was offered only to the promoters. The board of directors who controlled the corporation offered it to them, and they purchased it for \$100. The public had no opportunity to purchase it.

Senator O'MAHONEY. Under the laws of what State was that corporation chartered?

Mr. O'BRIEN. As I recall, that was Delaware, but I would like to reserve the right to make a correction in that if I am wrong.

Senator O'MAHONEY. Please check that. Have there been any other instances of such great disparity between the cost of the controlling stock to the promoters and the cost of the other stock to the public?

Mr. O'BRIEN. Yes. Those are quite common. For instance, in that case, as I recall it, the class A stock had a preference to dividends which amounted to about 6 percent. Thereafter the common stock participated equally with that senior stock in any earnings over the amount required to pay that preference. The percentage of return to the promoters in relation to the capital contributed might run up as high as 3,000 or 4,000 percent, while the class A would return but 10 or 12 or 15 percent.

Senator O'MAHONEY. Do you recall where that corporation originated?

Mr. O'BRIEN. I think it was chartered in Delaware. I am quite sure it was.

Senator O'MAHONEY. Where was it selling its stock?

Mr. O'BRIEN. Generally, in interstate commerce.

Senator O'MAHONEY. It received its capital from people generally throughout the United States?

Mr. O'BRIEN. That is correct. The general public was being called upon to contribute to the enterprise.

Senator O'MAHONEY. I should like to have you prepare or have somebody prepare a list of corporations of that kind. If you are not at liberty to give the names, that will not be necessary, but give us some idea of the number of corporations which have registered with the Securities and Exchange Commission which disclose such a situation as you just now described.

Mr. O'BRIEN. I will be glad to do so.

Senator O'MAHONEY. Have you any power under the Securities and Exchange Act to control or regulate in any way the distribution of corporate funds, whether out of capital or out of earnings, by way of bonus to the members of the management on their own stock?

Mr. O'BRIEN. None whatsoever. All we can require is that whatever the compensation is or whatever the basis for its payment may be, that must all be adequately revealed, so that a person buying into the corporation would have notice of what was charged against it in the way of compensation for services.

Senator O'MAHONEY. What possibility is there for the public to learn the exact status of a corporation operating such as that? What opportunity is there for the public to learn those facts which you have disclosed?

Mr. O'BRIEN. The opportunity to learn the facts in connection with the public distribution of stock which comes within our jurisdiction, I would say, in most cases, is very good, assuming a conscientious and truthful statement on the part of the management.

Senator KING. If they do not state the truth an offense is committed?

Mr. O'BRIEN. That is true.

Senator KING. A man runs the risk of going to the penitentiary if he makes a false statement of the set-up, does he not?

Mr. O'BRIEN. That is correct.

Senator NORRIS. I understand your principal work or objective is that there be a medium by which the public will know what the facts are.

Mr. O'BRIEN. That is correct.

Senator NORRIS. You cannot correct any errors? All you can do is require the facts to be stated and given to the public?

Mr. O'BRIEN. That is correct. We do not possess supervisory powers.

Senator O'MAHONEY. When corporations are registered, such as you have just described, in which the promoters secured absolute control by contributing \$100 to capital and were selling 100,000 shares to the public, what opportunity is there for the public to protect itself, in spite of that publicity by the Securities and Exchange Commission, against the smooth-talking salesman who disposes of the stock?

Mr. O'BRIEN. Of course, that capital structure permits that. Assuming a conscientious management at one time, you do not know when it is going to change. In that situation the stockholder depends upon whatever conscience that management has.

Senator AUSTIN. The only way that can be overcome is by having a day-to-day supervision of the corporation by the Government, is it not?

Mr. O'BRIEN. Again, as I said before, that involves so much that I would not care to answer it offhand.

Senator O'MAHONEY. May I answer your question? I know you are anxious to have my view.

Senator AUSTIN. Always.

Senator O'MAHONEY. Of course, it does not involve a day-to-day supervision at all. If corporations are deprived of the power to issue stock in the manner described, it would not be necessary for anybody to interfere in the management.

Senator KING. Let me make this observation: A corporation is formed by individuals who purchase property. They sell the stock and tell the people: "You can buy this stock at a dollar a share. We have control of the company." If those who buy the stock know the facts, and know those men, if they succeed, are going to get a very large amount for the promotion of the company, they will not object to that. They are interested in getting a dividend. If they get that, they do not object to the other man making as much as he can.

Senator AUSTIN. I want to ask one further question: Suppose the promoters of a private corporation who intend to put their capital stock on the big exchange for sale fail to comply with what your Commission regards as suitable information to the public in their plan and in their prospectus, then what? What do you do about it?

Mr. O'BRIEN. We have a choice of things to do. Assuming that there are material omissions or misrepresentations of the facts, we can issue a stop order on proper notice, with opportunity for the registrant to be heard. We can likewise seek an injunction enjoining a further distribution or sale of the stock.

Senator AUSTIN. Before those remedies are exercised do you not have another one? What is the first requisite to anyone who is promoting a corporation and wants to get it onto the exchange?

Mr. O'BRIEN. Of course, we have the procedure which involves the filing of certain data with us.

Senator AUSTIN. You can stop it in advance, can you not?

Mr. O'BRIEN. I do not quite understand you.

Senator AUSTIN. You can prevent its going onto the board at all, can you not?

Mr. O'BRIEN. Yes; but, of course, a corporation in that situation, even though its stock is not listed on an exchange, could offer stock for sale to the public.

Senator AUSTIN. The moment he uses an instrumentality of the Government, such as the post office, or the moment he undertakes to use a common carrier of any kind, he runs right into a criminal penalty for undertaking to distribute that stock without your authority, does he not?

Mr. O'BRIEN. He does not receive our approval. We examine registration statements in order to determine as far as we can whether they are intelligible, clean-cut, and on their face appear to tell the truth.

Senator AUSTIN. Does he not have to submit a plan or prospectus that is satisfactory to you?

Mr. O'BRIEN. The statute provides, the Securities Act, that a registration statement shall become effective 20 days after the date of filing, unless the Commission intervenes with some action. Our sitting still during that time does not prevent his obtaining an effective registration statement. Under the Exchange Act the registration statement becomes effective 30 days after certification by the exchange.

Senator AUSTIN. Then you have no power, if I correctly understood your answer, to prevent the carrying forward of a plan under a prospectus that you disapprove? Is that right?

Mr. O'BRIEN. The term "disapprove" is not quite apt in describing our authority under the statute. We may or may not be satisfied with a given plan of financing. In that sense we might disapprove it. But if all the facts concerning that plan are revealed and its bad elements shown, we have no basis upon which to take action. Unless we take affirmative action that statement will become effective within 20 days. We do have power, assuming misstatements or material omissions, either to prevent the registration statement from becoming effective or to take action to suspend its effectiveness when it has become effective.

Senator O'MAHONEY. What do you mean by saying you can prevent it from becoming effective?

Mr. O'BRIEN. Section 8 (b) of our statute provides that if a registration is incomplete or inaccurate on its face, we can by giving 10 days' notice and opportunity to be heard issue an order preventing the statement from becoming effective. Section 8 (d) of the statute provides that if we have reasonable grounds to believe the statement contains untrue or misleading statements we may give notice of a hearing to be held within 15 days of the date of the notice. The entire record of the hearing is passed upon by the Commission to determine whether grounds for issuing the order exist.

Senator O'MAHONEY. If there are no objections, the subcommittee will stand in recess until Thursday morning at 10:30, and we will be glad to hear Mr. Cunningham at that time.

(Whereupon, at 12 o'clock noon, a recess was taken until Thursday, March 3, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

THURSDAY, MARCH 3, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (chairman), King, Logan, Borah, Norris, and Austin.

STATEMENT OF ELMER T. CUNNINGHAM, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS

Senator O'MAHONEY. Mr. Cunningham, are you to proceed?

Mr. CUNNINGHAM. Yes, sir.

Senator O'MAHONEY. Please give your name.

Mr. CUNNINGHAM. Elmer T. Cunningham.

Senator O'MAHONEY. And your position?

Mr. CUNNINGHAM. I am temporarily resigned and inactive at the present time, so far as business activities are concerned.

Senator O'MAHONEY. In what capacity do you come here?

Mr. CUNNINGHAM. I am acting chairman of the committee of the National Association of Manufacturers on the Relation of Government to Industry. I am reporting their position on this proposed legislation.

Senator O'MAHONEY. You are not in the employ of the National Association of Manufacturers?

Mr. CUNNINGHAM. No, sir.

Senator O'MAHONEY. You were at one time associated with the Radio Corporation of America, were you not?

Mr. CUNNINGHAM. I was president of the R. C. A. Manufacturing Co. up to May of last year, at which time I resigned.

Senator O'MAHONEY. How long did you occupy that position?

Mr. CUNNINGHAM. I occupied that position for 4 years. From April 1931 to April 1933 I was president of the R. C. A. Radiotron Co., Inc. On April 1933 I became president of the R. C. A. Victor Co., Inc. About a year later that was consolidated into the R. C. A. Manufacturing Co., Inc., and I became president of that consolidated company and continued in that capacity until the end of April 1937. During those 6 years I completely reorganized the electrical companies of R. C. A.

Senator O'MAHONEY. The R. C. A. Manufacturing Co. is a subsidiary of the Radio Corporation of America, is it not?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. And the R. C. A. Radiotron Co. is also a subsidiary of the Radio Corporation of America?

Mr. CUNNINGHAM. Yes. That was consolidated into the R. C. A. Manufacturing Co. in 1934 or 1935.

Senator O'MAHONEY. As a wholly owned subsidiary?

Mr. CUNNINGHAM. A 100 percent subsidiary.

Senator O'MAHONEY. And the officers of that corporation are elected how?

Mr. CUNNINGHAM. Of the subsidiary company?

Senator O'MAHONEY. Yes.

Mr. CUNNINGHAM. By the holding company.

Senator O'MAHONEY. So that actually, while you were the managing head of the manufacturing company, you were the appointee of the holding company?

Mr. CUNNINGHAM. Well, I think technically I should correct that. The officers were appointed by the board of directors of the manufacturing company, but they were substantially identical between the 100 percent subsidiary and the holding company. The chairman of the board of the manufacturing company was also president of the Radio Corporation of America. I was appointed by the board of directors of the manufacturing company.

Senator O'MAHONEY. Were you the owner of stock in the parent corporation?

Mr. CUNNINGHAM. No, sir. I would like also to state, as a business background, that I started in the electrical business in San Francisco in 1911. In 1920 I organized the Cunningham radio-tube business, which I managed to build up over a period of 10 years, and eventually sold it to the Radio Corporation of America in 1930. I have a background of 27 years of experience selling and manufacturing.

Senator O'MAHONEY. How many persons were employed by that company?

Mr. CUNNINGHAM. That was purely a selling company. I should say about 180.

Senator O'MAHONEY. What happened to those employees when the corporation was sold to R. C. A.?

Mr. CUNNINGHAM. The employees continued with the corporation, and the corporation was continued for about a year. As the depression continued it was consolidated into another company, with a general reduction of employees all the way through, and during the depression many of them were released, based upon business conditions.

Senator O'MAHONEY. And one of the results of combinations and mergers such as that is ordinarily to cut down overhead expense, is it not?

Mr. CUNNINGHAM. I would not say necessarily so; no.

Senator BORAH. I do not understand for whom you appear.

Mr. CUNNINGHAM. I am appearing to make the report of the committee of the National Association of Manufacturers.

Senator BORAH. I received a telegram this morning, which I understood was from the National Association of Manufacturers, desiring time to present their case. Is that the same organization you represent?

Mr. CUNNINGHAM. The National Association of Manufacturers?

Senator BORAH. Yes.

Mr. CUNNINGHAM. I am making the report on this legislation for that association.

Senator O'MAHONEY. I think there must have been some misunderstanding about that, Senator Borah. Mr. Emery, counsel for the National Association of Manufacturers, was to appear here Tuesday when the hearings opened, but he was summoned on that day to appear before the Civil Liberties Committee.

Senator BORAH. I received a telegram last night. I wonder if I got the name wrong.

Mr. CUNNINGHAM. Mr. Emery is also to appear and discuss the legislation from an entirely different standpoint.

Senator NORRIS. I would like to get the set-up of these corporations. The R. C. A. is the parent corporation?

Mr. CUNNINGHAM. Yes.

Senator NORRIS. Is there any corporation above that?

Mr. CUNNINGHAM. No.

Senator NORRIS. How many subsidiaries or other corporations does it own?

Mr. CUNNINGHAM. It owns the National Broadcasting Co.; it owns the R. C. A. Communications Co.; it owns the R. C. A. Radiotron Corporation; it owns the R. C. A. Manufacturing Corporation; it owns the R. C. A. Radio Institute. Those, I believe, are principally operating subsidiaries, all 100 percent owned. Whether there are any others, I cannot state.

Senator NORRIS. Do any of these subsidiary companies in turn own some other company or companies?

Mr. CUNNINGHAM. Yes.

The R. C. A. Manufacturing Co., of which I was president, had a wholly owned subsidiary in England, and in Brazil, in China, in Argentina, and Chile, and also Canada. Up to a short time ago there was a partly owned subsidiary in Japan. There is also a subsidiary in Australia, and another in India.

Senator NORRIS. Do those wholly owned corporations in different parts of the world in turn own some more subsidiaries?

Mr. CUNNINGHAM. No.

Senator NORRIS. That is the end of the chain?

Mr. CUNNINGHAM. Yes.

Senator KING. I suppose those were organized in foreign countries under their laws?

Mr. CUNNINGHAM. No. Some are domestic companies and some are foreign companies.

Senator O'MAHONEY. Which are the foreign companies?

Mr. CUNNINGHAM. The Canadian Corporation was organized under the laws of Canada. The Japan Corporation is under the laws of Japan. The English Corporation, I believe, was organized under the laws of England. The South American subsidiaries are American corporations.

Senator O'MAHONEY. How about the China subsidiary?

Mr. CUNNINGHAM. I do not want to be positive about that.

Senator O'MAHONEY. How about Australia?

Mr. CUNNINGHAM. Again, I do not want to be positive.

Senator O'MAHONEY. Or India?

Mr. CUNNINGHAM. That I cannot state. I am under the impression that they are domestic corporations, but I am not positive.

Senator O'MAHONEY. You are referring to manufacturing companies, are you not?

Mr. CUNNINGHAM. Manufacturing and selling companies.

Senator AUSTIN. From the point of view of convenience, the British corporation would be the natural thing in England, would it not?

Mr. CUNNINGHAM. Yes.

Senator AUSTIN. And an American corporation would be a suitable corporation for Canada?

Mr. CUNNINGHAM. I think that is a Canadian corporation.

Senator KING. Some of those are selling companies, are they not?

Mr. CUNNINGHAM. Yes; a majority of them.

Senator KING. Did the parent company consider it was advantageous to organize subsidiaries to carry on the selling activities in Britain and Brazil and Canada and these other countries?

Mr. CUNNINGHAM. Many of them were taken over as separate operations when the Victor Talking Machine Co. was taken over. That company had a plant in China, and also in Argentine and Brazil and Chile, and in Japan and in Canada. Those operations were consolidated into these companies at that time. It was stated that operating conditions required that.

Senator O'MAHONEY. Is the parent corporation a Delaware corporation or a New Jersey corporation?

Mr. CUNNINGHAM. I was never an officer of that company. I could not state.

Senator O'MAHONEY. In any event, it was incorporated by an American State, and with its subsidiaries it practically covers the entire globe, sometimes organized under the laws of the nations in which they are situated?

Mr. CUNNINGHAM. The manufacturing association has many foreign companies in addition to the domestic operations.

Senator O'MAHONEY. The picture you have given us is that of tremendously concentrated control of manufacturing under the R. C. A. throughout the whole world, is it not?

Mr. CUNNINGHAM. That was the initiation of our method of doing business.

Senator O'MAHONEY. I am not criticising it. I am just pointing out the picture you have drawn for us of a corporation which is actually an international organization.

Mr. CUNNINGHAM. Yes.

Senator BORAH. Just what power has the parent company over these subsidiary or sub subsidiary companies? How thoroughly does it control them?

Mr. CUNNINGHAM. I would say practically entirely.

Senator NORRIS. It owns all the stock?

Mr. CUNNINGHAM. Yes; all except the Japan company, of those that I have enumerated.

Senator KING. To use the phrase of the chairman, an "international company," you are doing business here and in Brazil and China and wherever you are able to sell your products?

Mr. CUNNINGHAM. Yes. Many of those foreign operations are very small.

Senator O'MAHONEY. Pardon us for interrupting you. You may proceed with your statement.

Mr. CUNNINGHAM. I would like it to be clear that I was only the president of the manufacturing company, and I resigned that position last April. I am not speaking officially for the Radio Corporation of America in any way. I am merely speaking from our experience in answer to your questions. I have no official status to speak for them.

Senator O'MAHONEY. I think that is clearly understood.

Mr. CUNNINGHAM. I did not want to be under any misrepresentation.

Senator O'MAHONEY. Oh, no. You may proceed.

Mr. CUNNINGHAM. First, I would like to report that the original bill on this proposed legislation, which was S. 10, was discussed by the National Association of Manufacturers Committee on the Relation of Government to Industry, and, after consideration, they disapproved that bill. That report was approved by the board of directors of the association. There was a modified bill subsequently introduced. That was also studied by the same committee, was disapproved, and that action was approved by the board of directors.

Senator O'MAHONEY. Let me say that title IV, which is not now before the committee, was based upon two statutes which have been approved by the Supreme Court. One of them was interpreted in what is known as the *Kentucky Whip Case*. That was the Federal law prohibiting the shipment of convict-made goods in interstate commerce. So that law had the approval of the Supreme Court.

Title III of that bill was practically identical with the measure which was submitted to Congress by President Taft in 1910, with his approval. It was drafted by Attorney General Wickersham of the Taft Cabinet.

Title II of the bill was founded upon a measure introduced by John Sharp Williams of Mississippi in 1911; and title I of the bill was the only modern feature. That is not now before the committee.

Senator KING. I do not understand that you are arguing that because President Taft or John Sharp Williams or anybody else drew a bill, which you approved, and which they approved, that the business interests ought also to approve it?

Senator O'MAHONEY. Not at all. I am not making any argument. I am calling the attention of the witness to some facts.

Mr. CUNNINGHAM. I am merely reporting the activities of that committee, which has discussed a series of measures over a period of years, which originated with S. 10, which was subsequently modified, and is now before the committee in modified form. The modified bill again received the attention of the committee, was considered and disapproved by the committee, and disapproved by the board of directors on February 26, 1938.

Senator BORAH. Is that the present bill?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. You may proceed.

Mr. CUNNINGHAM. I may say that I have personally prepared what I have to say to the committee. It is not an official document of the association.

The thoughts and comments that I expressed are based on H. R. 9589, introduced in the House on February 21, 1938, and designated the "Corporation Licensing Act of 1938."

Senator O'MAHONEY. Who introduced that bill?

Mr. CUNNINGHAM. Mr. Mead.

Senator O'MAHONEY. That is identical with the bill before the committee?

Mr. CUNNINGHAM. That was my advice, that it is the bill now before the committee, which I understand is not officially introduced in the Senate, but is being considered by this committee.

Senator AUSTIN. Is that the situation?

Senator O'MAHONEY. I have not read Mr. Mead's bill, but I think it includes the substitute which Senator Borah and I presented to the subcommittee.

Mr. CUNNINGHAM. That is my advice from Mr. Emery.

Senator O'MAHONEY. I have no doubt he compared the two. I knew that Mr. Mead was going to do that. You may proceed.

Mr. CUNNINGHAM. This proposed bill provides for a national licensing system to attain certain desired objectives in the general welfare through the use of the commerce power. These objectives will be found from examination of the following:

1. Section 1 (4): The increasing proportion of national wealth under the control of a decreasing number of corporations, and a resultant impairment of the economic bargaining power of labor employed by such corporations.

2. Section 1 (5): Federal legislation alone can control or eliminate the causes of such concentration of corporate wealth.

3. Section 1 (6): To prevent unfair or monopolistic methods of competition in commerce.

4. Section 1 (6): By regulating the terms and conditions on which corporations may produce and distribute commodities in commerce to thus protect, foster, and increase commerce, thereby increasing public buying power, reducing unemployment, and correcting the maldistribution and concentration of economic wealth and power.

As a further guide to the purposes of this bill I quote the following from Senator O'Mahoney's press release of February 20:

The fundamental philosophy of this measure is that no permanent recovery can be achieved by Government action alone. If business is to be restored, it must be set free to work out its own destiny. The initiative of America as well as the private capital of America must be put to work. Prosperity cannot be achieved upon crutches. Loans and grants and W. P. A. wages, financed out of Government deficits, will never restore our economic health. The way to revive private business activity must be found.

This we attempt to do in this bill by providing a blueprint for industry. Within the four corners of this measure every businessman will know what is required of him. It will be plain that he is not to be dependent upon the discretionary power of the Government agent nor the victim of monopolistic combinations.

And still quoting:

Corporations are deprived of the corporate power to follow the practices by which alone trade and commerce can be restrained and monopolies built up.

Because this bill touches on so many aspects and established conditions of our economic activity, my comments are confined to certain features only and principally as such features bear on the bill's declared objective to promote recovery and reemployment.

UNFAIR OR MONOPOLISTIC METHODS OF COMPETITION

In my opinion the bill assumes that today there exists in commerce an extensive use of unfair or monopolistic methods of competition in violation of existing law, and that by eliminating these violations,

prompt and substantial reemployment will occur. In my own business experience I have found intense but lawful competition to be the rule and not the exception.

During the past 6 years depressed business conditions intensified the severity of competition in the fight for business, and while this extreme competition does involve some abuses and possibly in some cases, social disadvantages, the principal results have been intensified efforts by businessmen to create new products, to improve old products, to lower costs and prices, to improve business efficiency in the production and distribution of goods and services to the public, to expand sales volume, and thus increase employment. The profit incentive of the American enterprise system is most powerful and the essential driving force in the direction of increasing employment and raising American living standards. By and large, I feel that businessmen desire some relief or let-up from the past few years' competition rather than attempts to further increase competitive efforts. I can speak competently only with respect to that small segment of American economic activity in which I had an active part and therein I know of no monopolistic practices, but only the most intensive competition. It is impossible for any businessman to speak competently of the practices of all business, but I believe that if all the facts be known they would show unlawful practices under the antitrust laws to be rare exceptions and that unfair or monopolistic methods in competition in violation of law have no, or at most, only an insignificant effect on present employment and recovery.

The swings in employment in industry are principally the result of forces in other segments of our economic and social life and not the result of any violations of our antitrust laws.

Assuming an extensive violation of the antitrust laws, the bill broadens the scope and meaning of present antitrust laws, provides a new administrative machinery for ascertaining violations and also creates new and severe penalties. Whether the premises are correct or incorrect; namely, that unlawful monopolistic practices are affecting employment, in my opinion the investigation in connection with the granting of licenses and the subsequent continuous administrative supervision of business practices under the licenses, coupled with other provisions of the bill, will violently disturb business, thus reducing present employment and retarding recovery for an appreciable time.

HOW MANY BUSINESSES ARE AFFECTED?

Only a rough estimate can be made. The census shows that there were 169,111 manufacturing establishments in 1935. There are probably more today.

Senator O'MAHONEY. Let me interrupt you there. There is a distinction between manufacturing corporations and establishments, is there not?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. So that when you use the word "establishments" you are covering a field not covered by the bill, which deals only with corporations.

Mr. CUNNINGHAM. No. The bill includes associations, limited partnerships, and syndicates.

Senator O'MAHONEY. That is correct.

Mr. CUNNINGHAM. It is not limited to corporations.

Senator O'MAHONEY. Limited partnerships are in effect the same type. They are included in the bill for the purpose of preventing corporate evasion by adopting the other method. You may proceed.

Mr. CUNNINGHAM. Dun & Bradstreet estimated there were, in 1934, 1,973,000 active commercial and industrial business enterprises. Allowing for the various exemptions and special inclusions set forth in the bill, from the above figures and others I have examined, it seems reasonable to assume that at least 300,000 business enterprises would require Federal licenses and the actual figure may be considerably larger. To investigate and supervise 300,000 enterprises is a huge task.

Senator O'MAHONEY. Have you checked up the number of corporations having assets of \$100,000 or more?

Mr. CUNNINGHAM. No.

Senator O'MAHONEY. So your figures are not particularly reliable, then, are they?

Senator LOGAN. The bill does exempt corporations having less than \$100,000 capital, does it not?

Mr. CUNNINGHAM. Not capital.

Senator O'MAHONEY. Assets.

Mr. CUNNINGHAM. Gross assets, including the subsidiaries. So that the bill does not apply to those corporations, many of which are competing with the licensees.

Senator O'MAHONEY. In order that the record may be clear, let me say that, according to the report of the Internal Revenue Bureau in 1933, 367,901 corporations filed income tax returns. Of that number 211,586 had assets of less than \$50,000 each. So your estimate of 300,000 is not correct.

Mr. CUNNINGHAM. Is that gross assets or capital?

Senator O'MAHONEY. Those are the assets reported to the Internal Revenue Bureau. I am using the figure of \$50,000 instead of \$100,000.

Mr. CUNNINGHAM. But they are gross assets?

Senator KING. I do not think the Internal Revenue Bureau would require a statement of gross assets.

Senator O'MAHONEY. They are assets as well as income.

Mr. CUNNINGHAM. The bill refers to gross assets, which is a rather unusual measure. The bill, of course, includes public utilities engaged in commerce, and considers them under a rather broad definition. It includes farm organizations, syndicates, associations, partnerships, and corporations, as well as cattle raisers—other fields other than manufacturing and selling, except the two fields specifically exempted. It is very difficult to make a correct appraisal of the number that would be involved. I think it is a very large number. That is the way it appears to me.

Senator KING. Senator, do you contend that it does not include agricultural corporations, such as dairy corporations?

Senator O'MAHONEY. No; they are not excluded.

Senator KING. They are included?

Senator O'MAHONEY. If they have assets of \$100,000. You may proceed.

Mr. CUNNINGHAM. The Interstate Commerce Commission's task of regulating our railroads is small in comparison. This law will require a vast Nation-wide expansion in its personnel of the Federal Trade Commission, governmental expenses will be increased, but more

important is the great disturbance to business at a most inopportune time. This aspect alone makes this bill inadvisable legislation at the present time. The bill should be withdrawn for further study to develop other procedure for attaining some of its desirable objectives.

PROCEDURE TO OBTAIN LICENSE

Initial information and data to be supplied by all applicants, as listed in section 3 (b) will mean not only substantial expense but also a serious diversion of time and effort by business proprietors and executives at a time when all their efforts, energies, and thinking should be concentrated on the problems of restoring and increasing employment. The effect on the smaller corporations and businesses will be far more serious than on the large ones. With respect to old, established corporations some of the data requested may be unobtainable, or obtainable only at great expense, such as—

1. The terms on which its securities have been offered to the public or otherwise.

2. The property taken by the applicant at the time of its organization and the consideration paid therefor in money or otherwise.

3. The board requirement of "such further information with respect to the operations of the applicant as the Commission may, by regulation, require as necessary or appropriate in the public interest or for the protection of investors."

In addition to the foregoing, section 4 (a) places an even greater expense on applicants and a more serious drain on the time and effort of businessmen, since no license can be granted if the applicant is an unlawful trust or combination in violation of the antitrust laws, or if it is monopolizing, or attempting to monopolize, or combining or conspiring with any other person to monopolize, any part of such commerce. Believing as I do, that the vast majority of businessmen are conducting their business in full compliance with their understanding of the antitrust laws and laws relating to competition, including the somewhat indefinite provisions in the Robinson-Patman amendment of the Clayton Act, section 4 of this bill would seem to require that the Federal Trade Commission, before granting any license, must conduct a most thorough examination of all the business acts and practices with respect to all products and classes of customers of each applicant. The granting of the license is to start the applicant with a clean bill of health under the antitrust laws.

This is a huge administrative task and it would undoubtedly require many years before the Federal Trade Commission could investigate all applicants and grant them licenses.

All efforts at this time must be directed toward permanent recovery and increasing employment. That is the vital task all of us face. To place hundreds of thousands of businesses under licensing investigation at this time will retard not aid recovery. Regardless of the merit or demerit in its premises, this is not the time to make this bill the law of the land.

CONTINUOUS COMMISSION SUPERVISION OF LICENSES

In the field of industry and commerce this bill provides a new and unusual administrative procedure for insuring compliance and observance of the antitrust laws and all provisions of a corporation's license.

It would be the same as a plan to enforce compliance with automobile speed and traffic laws by requiring a governmental observer to be constantly or periodically seated alongside the driver of every automobile to observe and report all violations under threat of revocation of the operator's driving license and a denial of the use of the automobile itself.

The plan in this bill will subject licensed corporations to continuous bureaucratic investigations to ferret out possible violations of all license provisions, to develop additional license provisions, and more particularly to investigate possible violations of antitrust laws, the antimonopoly provisions of this bill and violations of laws, rules, or regulations to unfair competition. American business proprietors and managers of industrial enterprises cannot function efficiently under such conditions.

PENALTIES

This bill provides for a variety of penalties, some directed against individuals but most directed against the corporation itself. Penalties against a corporation with many stockholders are essentially penalties against innocent stockholders, employees, and creditors. Broadly speaking, violations of any provisions of this bill will result, not from the affirmative action, or even with the knowledge of individual small stockholders, but from the acts of one or more individual officers, managers, executives, or employees of a corporation. Such acts in violation of this proposed law will most frequently be inadvertent or unintentional or the result of misunderstandings or carelessness.

This is particularly true with respect to acts that may finally be adjudged in violation of the antitrust laws or laws relating to unfair trade practices, or the labor provisions of this bill, since these laws are general, not specific, in their terms. A wide range of permissible and lawful practices may subsequently in individual cases be held unlawful on legal proof of instant, effect or result. Any individual can be expected to obey the edict "Thou shalt not steal," but no such definiteness exists in the antitrust and collective bargaining laws with respect to many everyday practices in competitive commerce.

While violations of law must be punished, I submit that with respect to the provisions of this bill it is unduly harsh to punish and injure small, innocent stockholders, employees, and creditors for the acts of individual officers or managers that may finally be adjudged unlawful. A cease-and-desist order, with fair restitution for proven injury, with exemplary damages only in extreme cases, and possibly with penalties against the individual for proven vicious violations, would seem adequate to bring about observance and compliance. To suspend even temporarily a corporation's right to do business would result in large and irreparable losses to stockholders, liable in law, but innocent in fact.

MISCELLANEOUS PROVISIONS AND COMMENTS

One license provision prohibits child labor. I am opposed to child labor in industry. Child labor in industry can be prohibited by the Congress passing the Clark-Connery bill on this subject. To continue this license provision in this bill will require the Federal Trade Commission to undertake the investigation of licensees' employment and a subsequent enforcement of the prohibition against child labor.

This license provision applies only to licensed corporations and the need for additional Federal child-labor legislation applicable to the broader field of all industry would still remain.

I would like to state that the National Association of Manufacturers has gone on record against child labor and in support of proper Federal labor legislation to stop it, wherever child labor is practiced in manufacturing industries.

Senator O'MAHONEY. Did not the association oppose the child-labor amendment when it was before Congress?

Mr. CUNNINGHAM. I could not say as to that.

Senator O'MAHONEY. You may proceed.

Mr. CUNNINGHAM. One license provision is to protect employees in their right of self-organization and collective bargaining. The National Labor Relations Act is now the law of the land and is being actively administered and enforced by a Federal bureau. The license provision is unnecessary and inadvisable since its inclusion would merely require the Federal Trade Commission to duplicate or possibly conflict with the activity of the National Labor Relations Board. This license provision does not help in establishing a Federal labor policy in the general welfare. I would like to state that the National Association of Manufacturers has gone on record in approval of collective bargaining.

Another license provision prohibits discrimination between male and female employees. I cannot oppose this policy on social grounds but its practical effect at this time would seriously disturb employment relations and recovery.

The use of gross assets, section 3 (a), is not a fair test of uniform size. Tangible net worth is a more appropriate measure of size.

Section 2 (j) would seem to require many investment trusts, commercial, investment, and trust banks, other credit companies, insurance companies, railroads, utilities, and other type of corporations not directly engaged in trade or industry to either obtain a license or to materially modify many of their existing relationships. The effect of this on recovery under present conditions cannot be helpful.

Reviewing what I have said so far leads me irresistibly to the conclusion that this bill seeks recovery and reemployment on the basis of an incorrect premise, namely, that wide and extensive use of unfair or monopolistic methods of competition have brought on our economic difficulties. If the bill's premise is wrong then its remedies will prove unavailing.

In my opinion our present difficulties are still the result of the great depression and the confusion in business thinking and planning resulting from governmental policies of recent years.

This bill touches on two other subjects I would like to comment on. Bigness as it affects employment and recovery, and State corporation charters.

THE CORPORATE POWERS GRANTED BY STATE CHARTERS

Many provisions of the bill relate to charter provisions granted by a State to a corporation and, in the field of commerce, seek to modify or annul some of those provisions. This raises the question of the bearing State corporation charters have on recovery and reemployment, particularly those charter grants of broad power with respect

to voting rights, dividends, authority of directors and officers, scope of permissible activities, and so forth. It must be conceded that State charters have granted broad powers to corporations but are not the abuses these powers have permitted primarily in the field of financial operations and not in trade or in industry.

The United States Government in recent years has availed itself of these broad charter grants of individual States by incorporating some of its activities, but that does not require the managers of these governmental corporations to abuse their powers.

The abuses of these State charters practically terminated some 7 or 8 years ago. The abuses were principally by holding companies and financial corporations. The abuses were those of unsound speculation and unsound policies in the field of finance and banking principally pyramiding utility and railroad holding companies, investment trusts, and banking affiliates. Federal legislation since 1933 has been enacted to stop these abuses and they should be stopped although it is difficult, if not impossible, to legislate good morals and unselfishness. Some provisions of this reform legislation seem to need modification in the interest of recovery. Our financial machinery has not yet been rebuilt so that it can perform its essential functions in a sound recovery.

I can think of no illustration in the past 20 years where the corporate device has made possible in industry an unlawful combination beyond the reach of our present antitrust laws. With present laws to prevent financial abuses there would seem to be no present reason for further legislation in that field such as this bill has under consideration.

CONCENTRATION OF COMMERCE AND INDUSTRY

One of the declared purposes of this bill is to prevent further concentration of business and to bring about some redistribution of present concentration. Will this bill accomplish these results? Will limitation or reduction of "bigness" promote recovery and increased employment? Has "bigness" resulted from monopolistic practices, disregard for and violation of the antitrust laws, or illegal suppression of commerce? Or is "bigness" in trade and industry the natural result of competition and the active pursuit of efficiency in production and distribution? Where does "bigness" primarily exist and why? What are the advantages and disadvantages of "bigness"? Socially? Economically? What forces operate to limit "bigness"? How essential is "bigness" from an international standpoint?

These questions should all be investigated and studied before Government decides on legislation in the general welfare. I recommend such a study to develop the facts and to arrive at a sound appraisal of their social and economic significance. Such a study should be coordinated with present active discussions of the need to modify the antitrust laws.

The corporate device has facilitated the growth of large companies, but I am unable to visualize how the provisions of this bill will limit natural growth or break down present lawful concentrations in trade and industry. There may be undesirable social aspects to large corporate concentrations that outweigh their advantages of efficient service to the public. If so, such undesirable features should be specifically brought out into the open for careful and thoughtful

consideration before considering applicable legislation. Should corporate power be limited to prevent horizontal or vertical integration in trade or industry regardless of efficiency in serving the public and fair treatment of employees and stockholders?

Without denying corporate growth, statements by Government spokesmen have, in my opinion, created an incorrect impression of corporate concentration in industry. Considerable publicity has been given to Berle and Means' figures published in 1932 that the 200 largest nonbanking corporations controlled 49.2 percent of the gross assets of all such corporations. These figures applied to December 21, 1929. Of the 200 corporations, 94 were public utilities, railroad, and traction companies. Actually the 106 industrial companies in the list accounted for slightly less than 18 percent of Berle and Means' estimate of all nonbanking corporate gross assets. In many respects the Berle and Means' figures distorted the actual situation and therefore the ability to draw fair conclusions.

Figures published by Dun & Bradstreet listed 1,820,000 active business enterprises in the United States in 1920. This number increased by 392,779 in the next 9 years to an alltime peak in 1929 of 2,212,779 active enterprises.

This decade of the twenties was a period of corporate consolidation and expansion but nevertheless prosperity enabled 392,779 new enterprises to join the ranks of American business. From 1929 to 1933 depression reduced the number by 252,079. In 1934 the trend was again upward with an increase of 13,200 to a total of 1,973,900 active business enterprises.

Senator KING. All those enterprises are not public; are they?

Mr. CUNNINGHAM. No; they are individuals, partnerships, or corporations.

Senator KING. A very large part of the business of the United States is conducted by individuals and partnerships; is it not?

Mr. CUNNINGHAM. Very largely.

Senator KING. And some of those individuals or partnership activities have very large capital?

Mr. CUNNINGHAM. Yes.

Senator KING. So that all the assets are not in the hands of corporations?

Mr. CUNNINGHAM. No.

Senator O'MAHONEY. You may proceed.

Mr. CUNNINGHAM. The census figures of manufacturing establishments show 177,110 in 1914, an increase during the war activity to 214,383 in 1919, a recession to 196,257 in 1921, a growth to 210,959 in 1929, a depression drop to 141,769 in 1933, and a recovery to 169,111 in 1935. Undoubtedly there was further growth in 1936 and 1937, and a recession has again set in. Since our private-enterprise system is a profit-and-loss economy it is natural to expect the number of active enterprises to vary with business conditions. Under conditions of public policy that promote recovery, individuals will risk their capital savings in enterprise thus expanding employment and further aiding recovery.

Figures compiled by the National Industrial Conference Board show during the 20 years from 1909-29, not over one-half of 1 percent in any year had more than 1,000 employees. The number of manufacturing establishments having 20 or less employees varied between 72.4 percent and 75.4 percent.

In 1929 those establishments employing 1,000 or more actually employed 24.4 percent of the total manufacturing wage earners. In 1914 these larger establishments employed 18.2 percent of the wage earners and by 1919 had increased to 26.67 percent. This rapid growth was undoubtedly due to the demands for war materials. By 1921 the percentage dropped back to 19.7 percent and then advanced to 24.4 percent in 1929 which was still below the war peak in 1919. The small establishments, with 20 or less employees, varied between 9.4 percent and 12.5 percent of total manufacturing wage earners. But during those 20 years manufacturing wage earners increased from 6,472,616 in 1909 to 8,838,743 in 1929.

Corporate "bigness" is predominantly in the field of finance and banking and in the railroad and public-utility fields.

"Bigness" in trades and industry is largely in the field of natural resources, in the so-called heavy industries, and where mass production or mass distribution are essential for high efficiency, low cost, and prices within the reach of the greatest number of buyers.

Even in the field of "bigness" there is keen competition.

Concentration is not evident in the lighter industries where large capital requirements are not the most essential element.

CONCLUSION

Recent statements by men in public life have, I believe, created a misimpression in the public mind toward business and, more particularly, corporate industry. The abuses of a few years back were predominantly in the field of finance and not in the day-to-day conduct of businessmen in operating their manufacturing and commercial enterprises. The public does not recognize this distinction and the businessmen who are responsible for making and selling America's goods and services are improperly blamed for economic conditions and as a consequence a great amount of restrictive and regulatory legislation is directed in their direction based on incorrect understanding or premise.

In these critical times business and government must cooperate in a common objective. Recovery must be accomplished by American businessmen. The profit incentive is the all-powerful driving force in American business life. Not the certainty of profits but the opportunity for profit will stimulate millions of individual enterprises to expand their operations, to create new products, to modernize plants, to risk "venture" capital.

Sound governmental policies will create confidence and release this tremendous latent energy of American business. These policies are a moratorium on reform legislation; a national labor policy in the general welfare; repeal of the undistributed-profits tax; modification of the capital-gains tax to stimulate capital movements; eliminate the so-called third-basket tax; definitely defined limitation on Government competition, with fair competitive policies where such competition now exists; careful review and modification where needed of existing legislation; sound fiscal and monetary policies.

In this statement I have not attempted any consideration of constitutional questions that may be involved.

I thank the committee for the privilege of appearing before it.

Senator BORAH. I understand your view is that there are practically no monopolistic practices in the field of industry?

Mr. CUNNINGHAM. No; I did not mean that. I say the effect on unemployment or recovery of monopolistic practices, in my opinion, is insignificant.

Senator BORAH. I want to get your view as to whether or not, in your opinion, there is any considerable amount of monopolistic practices or control in the field of industry.

Mr. CUNNINGHAM. Do you mean unlawful monopoly?

Senator BORAH. Yes.

Mr. CUNNINGHAM. I do not think so.

Senator BORAH. You do not think so?

Mr. CUNNINGHAM. I cannot speak generally, except from my own knowledge of what I have come in contact with.

Senator BORAH. Take a matter on which I am somewhat informed. Are you familiar with the farm-implement supply?

Mr. CUNNINGHAM. Yes.

Senator BORAH. Do you know whether there is any competition in that field?

Mr. CUNNINGHAM. I do not.

Senator BORAH. In my opinion, two or three companies fix the prices of farm implements in the United States. Are you in favor of that?

Mr. CUNNINGHAM. I am not in favor of price fixing or anything that is unlawful under the antitrust laws. I am a thorough believer in the strict enforcement of the antitrust laws. I believe the health of American business depends upon active competition. I was a supervisory agent under the N. R. A. Of course, businessmen were led to believe they were going to get some relief from the antitrust laws. I remember at the time you made a strong statement in support of the antitrust laws, and I felt that you were sort of upsetting the applecart of the N. R. A. I later came to realize that you were right, and you saw the necessity of competition being maintained. There are some kinds of competition that may be bad.

Senator BORAH. As far as I am concerned, my interest in this bill is confined to the proposition of undertaking to control monopoly and monopolistic practices.

Mr. CUNNINGHAM. Yes.

Senator BORAH. We would be very glad if businessmen such as yourself would be good enough to suggest to us how that can be done.

Mr. CUNNINGHAM. You have to have the facts, of course.

Senator BORAH. Just as an illustration, I might say that we have a file of reports of the Federal Trade Commission with reference to the food supply. It seems to me that they clearly establish that the food supply of this country is under the control of four or a very few great corporations, who dominate and fix the prices. You would not feel that ought to continue, would you?

Mr. CUNNINGHAM. If there is any unlawful control or price fixing, I would not be in favor of it. Competition must be maintained. I do not know about the food situation in that field, particularly among the meat packers, which seems to be the dominant industry. I am not competent to say. Certainly the profits are very slim, and that would not indicate any undesirable effects of monopoly. The profits do not show any such effect. That is a matter of careful study.

Senator BORAH. Some of those companies had a profit of 1,000 percent, according to that report.

Mr. CUNNINGHAM. Of these big corporations?

Senator BORAH. Food supply corporations.

Mr. CUNNINGHAM. The four that control the food industry?

Senator BORAH. Yes; the meat packers are some of them.

Mr. CUNNINGHAM. They did not all have 1,000 percent profit?

Senator BORAH. No; some of them showed that.

Mr. CUNNINGHAM. The middle companies?

Senator BORAH. No; the large companies.

Mr. CUNNINGHAM. The large companies?

Senator BORAH. Yes.

Mr. CUNNINGHAM. I can only speak of those things I am acquainted with.

Senator BORAH. Let us suppose there are monopolies, and they have the power to fix prices on such things as food, and such things as farm implements, and those things which are essential to production, essential to life, would you not say that there should be some way to control that situation?

Mr. CUNNINGHAM. Well, whether the present antitrust laws and the means of enforcing them are adequate or not, I am not competent to say. I do not know.

Senator BORAH. Businessmen frequently complain about the anti-trust laws, and say they do not know when they are violating them, and have asked for some kind of legislation through which they might be able to proceed without getting into court. I have always been of the opinion that the antitrust laws, if enforced, would have ended monopoly, but business people do not seem to like it done in that way. At almost every session we hear complaints of the anti-trust laws. They got what they wanted in the N. R. A., which was a further period of exemption.

Mr. CUNNINGHAM. I want to say that I am basing what I have said upon a background of 27 years in manufacturing and merchandizing experience in my industry. I have tried to give a detached statement touching on this matter.

Senator BORAH. You have given an excellent statement from that side.

Mr. CUNNINGHAM. I have been active in trade associations and the N. R. A. I have studied Mr. Donald Richberg's proposal. I want to first affirm an absolute belief in competition. Now then, there is a strong belief, and lots of facts to support it, that when competition goes to an extreme it tends toward the creation of large units, because the man who is more successful and efficient can drive the less efficient out of business, and the business flows to him. As I understand Mr. Richberg's proposition, it is simply getting it down to something definite that businessmen can understand. What the businessmen want—and whether it is good or not I am not here to say—is the right to seek some relief from these excesses of competition, and to permit reasonable technological improvement.

There are many factors involved in that. I have seen under the intensive competition of the last 5 years the development of competitive practices of a nature that the effects, I believe, are not for the general welfare. Any attempt between two or more men to stop that may bring them right under the antitrust laws. While we affirm our belief in competition and opposition to monopoly, we still believe that business men are entitled to relief from that form of competition.

Senator BORAH. One more thing. You stated that the parent company secures its corporate authority from some State in this Union, which authorizes that company to do business in every State in the Union and every country in the world.

Mr. CUNNINGHAM. Yes.

Senator BORAH. Do you think that such power as that should be given by a single State to operate in the field of interstate commerce, which is under the sole regulatory power of the Federal Government?

Mr. CUNNINGHAM. There has never been, I understand, any Federal incorporation law. The Congress has the power under the Constitution to create Federal corporations. It has never done so. But I do not look at this bill as a measure merely providing for Federal incorporation. It is something that needs great study. This is more than an incorporation bill, such as a State incorporation bill. This is really a governing bill. I would be in favor of Federal incorporation, if that would serve the general welfare better than the existing situation.

Senator BORAH. The word "if" would leave a broad field for discussion.

Mr. CUNNINGHAM. I think this is an "if" field.

Senator BORAH. Do you believe in a Federal incorporation law?

Mr. CUNNINGHAM. I would like to see it before I state. If that Federal incorporation law tended to improve the general welfare, yes.

Senator BORAH. Have you an opinion as to whether it would or not?

Mr. CUNNINGHAM. I do not know. I would have to see its terms and provisions and study them. I have been an active businessman all my life and tried to obey the laws. No doubt there may be abuses of the situation, but I feel the bulk of those abuses are not to be found in the day-to-day conduct of businessmen, but in certain promoting agencies in the field of finance. I am only talking from that standpoint.

Senator BORAH. You cannot separate finance from industry on this question of monopoly.

Mr. CUNNINGHAM. I can see that.

Senator BORAH. It might not be true in the smaller field, but you know the great financial institutions have much power over almost all the great industries.

Mr. CUNNINGHAM. Yes. I think the large companies are essential in economic production. I cannot think America would be off and provide higher living standards to more people by raising the cost of production, and the lowering of the social factors. It seems to me we should certainly develop a greater tendency toward lower manufacturing costs. The difference between cost and price must constantly be improved. We must continue to look in that direction.

Senator BORAH. May I ask you another question?

Mr. CUNNINGHAM. Yes.

Senator BORAH. You did not discuss the constitutional question, but this has to do with the constitutional question. The Federal Government has regulatory power over interstate commerce, has it not?

Mr. CUNNINGHAM. Yes.

Senator BORAH. Exclusively?

Mr. CUNNINGHAM. Yes.

Senator BORAH. These corporations created by the State are the instrumentality of interstate commerce, are they not?

Mr. CUNNINGHAM. Yes.

Senator BORAH. You would agree, would you not, that those corporations, those instrumentalities of the Government, should be controlled by the Federal Government?

Mr. CUNNINGHAM. I do not think I am competent to answer that question. There is a good deal involved in it.

Senator BORAH. I think, Mr. Chairman, that is all I have at the present time.

Senator O'MAHONEY. It is now 18 minutes of 12. Before you leave the stand, Mr. Cunningham, I would like to ask you one or two additional questions to develop what you have said in response to Senator Borah.

I understand you take the position that there is practically little monopolistic practice in industry today?

Mr. CUNNINGHAM. I cannot, as I said, express such a broad conclusion, because I have not all the facts; but I say that, in my opinion, violations of the antitrust laws are not the cause of the depression-prosperity cycle or unemployment or reemployment.

Senator O'MAHONEY. Did you not express the opinion that monopoly is practically nonexistent?

Mr. CUNNINGHAM. In my experience; yes.

Senator O'MAHONEY. If that be true, would it be a burden upon any corporation engaged in interstate commerce to have its power to do business conditioned upon the understanding and agreement that it will not engage in monopolistic practices?

Mr. CUNNINGHAM. This bill is not limited to that.

Senator O'MAHONEY. No; but let us take them one at a time, beginning at the beginning. Of course, this bill is not limited to that. I am trying to develop the things upon which we agree, because I thought you stated that the objectives which have been announced are fairly good.

Mr. CUNNINGHAM. Some of them are.

Senator O'MAHONEY. In other words, you agree with the stated purposes of the bill, and the question is whether or not it will achieve those purposes?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. So that, beginning now with No. 1, if it be true that monopoly is not practiced in industry, does it not follow that corporations engaged in interstate commerce would not be penalized or injured if they agreed not to engage in monopolistic practices?

Mr. CUNNINGHAM. I could generally say "yes" to that.

Senator O'MAHONEY. So that there is no objection to that?

Mr. CUNNINGHAM. The question is put in such a way that it is limited to one thing.

Senator O'MAHONEY. I am going on to other things.

Mr. CUNNINGHAM. You are limiting the question to that one issue.

Senator O'MAHONEY. For the moment.

Mr. CUNNINGHAM. The first comment I would like to make is that, if monopoly cannot be handled under the present laws, is this a proper method of meeting the situation.

Senator O'MAHONEY. Answering your question, I say "yes," because under our present method we permit monopoly to go ahead until after

the fraud has been committed, until after the business has been crushed, until after competition has been stifled, instead of doing what the purpose of this bill is, to prevent the practice in the first place by depriving corporations engaged in interstate commerce of the corporate power to do those things.

Mr. CUNNINGHAM. They do not have the corporate power today to violate the law.

Senator O'MAHONEY. Oh, but a corporation desiring to engage in such practice may combine with another corporation somewhere else, and effect a combination or merger, and those things are done. For example, when the Standard Oil Trust was originally formed, public sentiment was against it, and it appeared that it would be prosecuted. The organizers of the trust merely resorted to the device of going to New Jersey and forming a holding company, which acquired all the other companies, without apparent violation of the law.

However, I do not need to pursue the argument with you, because that would be futile. I am trying to develop the subjects upon which we agree, and those upon which you disagree with the sponsors of the bill. You would have no objection to the suppression of monopoly? It is just a question of how it is to be accomplished?

Mr. CUNNINGHAM. Absolutely. Unlawful monopoly should be eliminated.

Senator BORAH. Do you know of any monopolies that are not unlawful?

Mr. CUNNINGHAM. Yes. For instance, the patent law creates a monopoly.

Senator BORAH. You are speaking of patents. The Government grants the power to do that.

Mr. CUNNINGHAM. Yes. Also in the field of utilities the franchise may be granted under State regulation. There you have a lawful monopoly. You have a lawful monopoly in a small crossroads town with only one grocery store, because there is no community there to support it.

Senator BORAH. I do not understand those are monopolies.

Mr. CUNNINGHAM. I do not know how broadly you would use the term, but for practical purposes they are monopolies.

Senator BORAH. For instance, a grocery store may be located on a corner, and another grocery store can open on the next corner, if it wants to.

Mr. CUNNINGHAM. Yes.

Senator BORAH. The monopoly could control that situation if another fellow wanted to come in.

Mr. CUNNINGHAM. That is, if he had the power to exclude competition.

Senator BORAH. He would undersell him until he drove him out.

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. There is another provision of this bill dealing with subsidiaries. You are well acquainted with subsidiary corporations.

A full accounting of the affairs of such subsidiary corporation shall be made annually to the stockholders of the licensee.

That is the parent corporation. There would not be any objection to that, would there?

Mr. CUNNINGHAM. No.

Senator O'MAHONEY. That would not injure business?

Mr. CUNNINGHAM. I would not think so.

Senator O'MAHONEY. Here is another provision:

No bonus or commission or emolument of any kind of character in addition to his regular compensation shall be paid to any officer or director of the licensee except by vote of the stockholders at a regularly called meeting.

Mr. CUNNINGHAM. I think that is sound.

Senator O'MAHONEY. You agree with that?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. Here is another.

That all stockholders or members of the licensee shall have an equal right to vote the number of shares held by them, respectively, at all stockholders' meetings and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder, notwithstanding any provision of its charter for the issuance of nonvoting stock.

Do you have any objection to that?

Mr. CUNNINGHAM. From a practical standpoint, I think there can be two views of that.

Senator O'MAHONEY. Yes; but do you have any objection to it? Do you think it would injure business to have such a provision in the bill?

Mr. CUNNINGHAM. I think that would have to be weighed in connection with other charter provisions. Generally speaking, I believe they should have full proportionate voting rights.

Senator O'MAHONEY. Did you hear the testimony of the representative of the Securities and Exchange Commission yesterday, in which he spoke of a corporation with 200,000 shares of stock?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. That 100,000 shares with all voting power were sold at 1 cent a share?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. And the remainder was sold for a large amount?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. You would have no substantial objection to the provision I just read, would you?

Mr. CUNNINGHAM. I think it ought to be thoroughly weighed and considered. You cannot successfully manage a business enterprise without control of its operations.

Senator O'MAHONEY. How many members of the National Association of Manufacturers are faced with that problem?

Mr. CUNNINGHAM. I could not say.

Senator O'MAHONEY. Is it not a fact that most of the manufacturing corporations affiliated with your organization are closely held corporations, in which there is not a very wide distribution of the stock ownership among the public?

Mr. CUNNINGHAM. I think that is probably correct.

Senator O'MAHONEY. So they would not be affected by this provision?

Mr. CUNNINGHAM. I think that is probably correct.

Senator O'MAHONEY. So that when you consider that particular provision closely, it becomes apparent, does it not, that opposition to such a provision is merely defending the right and the opportunity

and the privilege of the management of big corporations to manage the aggregate of capital of those corporations without regard to the small stockholders? Is that right?

Mr. CUNNINGHAM. Possibly.

Senator O'MAHONEY. There is another provision:

That any stockholder of the licensee may deliver his proxy to any person who may be certified by the Civil Service Commission, in accordance with the provisions of section 20 of this act, as a certified corporation representative; that such corporation representative shall be entitled to all the rights and privileges of the stockholder whose proxy he may hold with respect to the examination of the books and affairs of the licensee and the transaction of business at any meeting of the stockholders or any meeting of the board of directors in which said stockholder might himself participate; and that every licensee to which this paragraph is applicable shall notify all of its stockholders of the provisions of this paragraph.

Is it not a fact that the handling of proxies has become a very serious question in modern business, particularly in the large corporations?

Mr. CUNNINGHAM. The proxy is generally solicited by the management.

Senator O'MAHONEY. The management sends out the proxy request, and the stockholder is permitted to vote "jah," as though he were in Germany.

Mr. CUNNINGHAM. That is the general course.

Senator O'MAHONEY. Do you think there would be any objection to a provision by which there would be set up this type of corporation representative, to which the stockholder might with confidence send his proxy, feeling that he was being fairly and honestly represented in the stockholders' meeting?

Mr. CUNNINGHAM. I think there might well be abuses of that, depending upon the ambition and morality, and so on, of the certified proxy holder.

Senator O'MAHONEY. That would be true with respect to any person to whom a stockholder might delivery his proxy, would it not?

Mr. CUNNINGHAM. Yes; but when the Government sets up an official list of proxies, it might impede or injure a well-managed corporation.

Senator O'MAHONEY. Is it not a fact that certified public accountants are now set up in that manner in most States, and that no person can hold himself out as a certified public accountant unless he takes the examination required by the State?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. That system has worked out satisfactorily, has it not?

Mr. CUNNINGHAM. I think so.

Senator O'MAHONEY. So you have no objection there?

Mr. CUNNINGHAM. I did not say that.

Senator O'MAHONEY. I beg your pardon. I withdraw that statement. That was a slip of the tongue. I was too anxious to get your approval.

Mr. CUNNINGHAM. Senator, after your wonderful fight on the Supreme Court bill, I hate like the devil to disagree with you on this. I would like to come down here and endorse everything, but I must stick to what I feel and believe.

Senator O'MAHONEY. Naturally.

You infer this bill will give the Federal Trade Commission the power to make the day-to-day investigation of which you speak?

Mr. CUNNINGHAM. Yes.

Senator O'MAHONEY. Suppose that it does not, how would you feel about it?

Mr. CUNNINGHAM. Suppose it does not?

Senator O'MAHONEY. Suppose the bill does not, or we should amend it so as to make unnecessary what you call a day-to-day investigation?

Mr. CUNNINGHAM. That would bring it back to the specific provisions of the Federal incorporation charter. I think that possibly benefit can be had by a law of that kind. I would like to study the charter provisions before passing a general endorsement on such a program. The objection there is to writing an antitrust law into a corporate charter, and writing a child-labor provision. I think those laws should be separate and distinct. Child labor ought to be State legislation, all over the country.

Senator O'MAHONEY. How many of your corporations are employing children under 16?

Mr. CUNNINGHAM. None.

Senator O'MAHONEY. Then they would not be injured if they agreed not to do it, would they?

Mr. CUNNINGHAM. I think this association has only 3,000 members out of probably 300,000 licensees.

Senator O'MAHONEY. When a corporation has acquired gross assets of \$100,000, and is operating in interstate commerce, it has already become a sizable institution with a national aspect, has it not?

Mr. CUNNINGHAM. It need not be national with \$100,000.

Senator O'MAHONEY. I mean engaged in interstate commerce.

Mr. CUNNINGHAM. That could be between two States, just a little local area.

Senator O'MAHONEY. Such a corporation, if a member of your association, and you are correctly advised, is probably not employing children now.

Mr. CUNNINGHAM. That is right.

Senator O'MAHONEY. Then, what would be the objection to making that a charter condition?

Mr. CUNNINGHAM. Under the present bill there is the general question of the administration of that provision, the Federal Trade Commission's power to supervise and investigate, and the penalty attached to the violation of it. A stockholder of a corporation could be fined a percentage of its capital stock. An officer could be prevented from doing business, because of a violation of that sort, and that might run all the way down. You might say the court may be lenient, but the penalties are here. I favor strict means of stamping out child labor in industry, but when you couple these extreme penalties with the power of the Federal Trade Commission, that presents a serious problem to many businessmen.

Senator O'MAHONEY. But you have already said that if it be a fact that you are mistaken in your opinion this bill would require the day-to-day investigation by the Federal Trade Commission to which you referred, it would be a different picture, would it not?

Mr. CUNNINGHAM. Yes; but the penalty attached to the violation of the charter would still continue.

Senator O'MAHONEY. Do you have any fundamental objection to Congress laying down the charter conditions of corporations engaged in interstate commerce?

Mr. CUNNINGHAM. No. I understand that the Constitution grants that right, and that is your right.

Senator O'MAHONEY. Congress does not always exercise its rights or all the power it has.

Mr. CUNNINGHAM. I take no position against Federal incorporation. I would want to see the bill before I would comment on it.

Senator O'MAHONEY. Have you anything further you would like to say?

Mr. CUNNINGHAM. Nothing further, thank you.

STATEMENT OF JOHN D. BATTLE, EXECUTIVE SECRETARY, NATIONAL COAL ASSOCIATION

Senator O'MAHONEY. Mr. Battle, you may proceed. First give your name and occupation.

Mr. BATTLE. My name is John D. Battle. I am executive secretary of the National Coal Association, a voluntary trade association composed of individuals, partnerships, and corporations.

Senator O'MAHONEY. You may proceed with such statement as you desire to make.

Mr. BATTLE. Mr. Chairman, I do not care to discuss the merits of the bill at all. I merely wish to point what I feel is an obvious oversight. I have before me S. 3072, the committee print, and in section 14 it is noted that common carriers are exempted, because they are now subject to Government control or regulation. That includes not only railroads, but pipe lines, telegraph and telephone companies, because they are common carriers and are now regulated by the Government. It exempts the broadcasting companies, because they are under governmental regulation. We are confident that it is an oversight that the bituminous-coal industry is not exempted, as it is now subject to control by the Federal Government. Not one phase of its business is not under complete control of the National Bituminous Coal Commission. That control is bottomed on the commerce clause of the Constitution.

I also notice that banks and publishing houses are exempt.

We therefore suggest the following amendment in section 14, by inserting after the words or figures "1934", in line 25 of the page 23, in the committee print of the bill of February 19, 1938, these words:

to any corporation, partnership, or person engaged in the mining and selling of bituminous coal subject to the Bituminous Coal Act of 1937.

I have no particular pride in the exact wording of that suggested amendment, but inasmuch as we are under complete governmental control I feel that the coal industry should not be subject to dual control by two Federal agencies. In order to function in the coal industry, there must be submitted full and complete information to the Coal Commission, subject to rules and regulations promulgated by that agency, and we feel there is no more reason for including those engaged in producing bituminous coal than to include railroads and others that are already exempted. I had not expected to take a definite position on the measure itself, but do feel that exemption should be granted.

Senator O'MAHONEY. It was the intention of those who drafted the bill to exempt such corporations as are already affected by any regulatory provisions of the Federal statutes.

Mr. BATTLE. That was my understanding.

Senator O'MAHONEY. I think you will have no difficulty about that amendment.

Mr. BATTLE. Thank you. If the language is not exactly correct, that control is covered by the Coal Act, Seventy-fifth Congress, first session.

ADDITIONAL STATEMENT OF ROBERT H. O'BRIEN, REPRESENTING THE SECURITIES AND EXCHANGE COMMISSION

Senator O'MAHONEY. Mr. O'Brien, I understand you have brought the material for which the committee made a request yesterday.

Mr. O'BRIEN. Yes. There is some additional material which we will submit as soon as we collect it.

Senator O'MAHONEY. This letter which you hand me covers what?

Mr. O'BRIEN. That includes a brief statement and description of the nature and jurisdiction and functions of the Commission in administering the Securities Act of 1933.

Senator O'MAHONEY. Have you brought a statement covering the use of surplus for distribution as dividends?

Mr. O'BRIEN. Yes.

I have here 14 separate memoranda which consist of brief summaries of registration certificates on file with the Commission. These memoranda relate to questions arising as to which type of surplus may be so used, particularly with respect to the restriction against the use of the surplus. These memoranda show how that surplus may be used, and in each instance the opinion of counsel is rendered, supporting the validity of the particular use under the law and the State in which the corporation is organized.

Senator O'MAHONEY. To what counsel do you refer?

Mr. O'BRIEN. These are various counsel.

Senator O'MAHONEY. Employed by the Securities and Exchange Commission?

Mr. O'BRIEN. Employed by the companies.

Senator O'MAHONEY. In other words, the attorneys employed by the companies file statements and arguments with the Securities and Exchange Commission as to how surplus may be used under the laws of the States in which the corporations are organized?

Mr. O'BRIEN. Yes. There are opinions to that effect included in these memoranda, or excerpts from those opinions.

Senator O'MAHONEY. Those documents may be inserted in the record.

(The documents referred to are here set forth in full, as follows:)

SECURITIES AND EXCHANGE COMMISSION,
Washington, March 3, 1938.

HON. JOSEPH C. O'MAHONEY,
United States Senate, Washington, D. C.

MY DEAR SENATOR O'MAHONEY: To supplement my statement before the subcommittee of the Judiciary on Tuesday, March 1, I should like to add a few words with respect to the function of the Commission under the Securities Act of 1933. In general, the Securities Act requires that the material facts essential to a judgment of the character of the security offered for sale be made available

to the investor in the form of a prospectus. The prospectus itself is a condensation or summary of certain information required to be included in a registration statement filed with the Commission. The Commission in no way approves or disapproves a particular security. Indeed, it is a criminal offense under the statute for any issuer or distributor of securities to represent that the Commission has in any way passed upon the merits of or given approval to a registered security.

The Commission's power is limited to requiring that full and fair disclosure of the material facts be made. It cannot control or supervise corporate practices or procedures. For example, facts reflected in certain registration statements sometimes indicate that the registrant company may be violating or may have violated, certain State or Federal statutes in the conduct of its business. The Commission in such cases insists that the company's actions in this respect and their effect on its business and the securities being offered be clearly set forth in the registration statement and prospectus. If such disclosure is made the Commission is not authorized under the Securities Act to prevent the registration statement from becoming effective. Where a corporation is acting in accordance with State law but its conduct would seem to be unfair to the security holders, again the Commission is not authorized to prevent the registration from becoming effective, but merely to require a full disclosure of the facts. If the registration statement appears to contain untrue or misleading statements of material facts, the Commission may institute proceedings under section 8 of the act, either to prevent or suspend the effectiveness of such statement.

I have made an effort to ascertain, as requested by the committee, the number of corporations engaged in business in interstate commerce which do not come within the jurisdiction of the Commission under either the Securities Act of 1933 or the Securities Exchange Act of 1934. I regret that it has so far been impossible to obtain any figures on this point which would be at all reliable. I shall further endeavor to determine the number of such corporations and advise the committee shortly of the results. Of course, there are many large corporations doing business in interstate commerce which have not made any public offerings since the enactment of the Securities Act of 1933 or the Securities Exchange Act of 1934, and whose securities are not listed on any national securities exchange. Accordingly, although the securities of those companies may be extensively bought and sold in interstate commerce, they are required to make no reports whatsoever to this Commission. A typical instance is a well-known oil company which apparently has approximately \$900,000,000 of securities outstanding which are traded in actively. No data have been filed by this company with the Commission. It is improbable that these corporations make generally available to their security holders information of the character and scope contemplated by the Securities Act and the Securities Exchange Act.

The question was raised as to whether the laws of certain States permit payment of dividends out of paid-in surplus and like practices. As bearing on that question, I am enclosing a number of memoranda summarizing certain statements made by registrant companies with respect to limitations or the lack of limitations upon payment of dividends from different classes of surplus, and excerpts from opinions of counsel relating thereto.

Very truly yours,

ROBERT H. O'BRIEN,
Assistant Director, Registration Division.

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A. MERGERS, CONSOLIDATIONS, RECAPITALIZATIONS

I. LIMITATIONS ON THE EFFECTIVENESS OF VOTING RIGHTS.

In December of 1932, The Equity Corporation was formed for the purpose of gaining control of investment trusts and investment trust companies and consolidating them "into one corporation or into a coordinated, controlled group." Incidents in the history of this company's expansion program bring into clear focus existing deficiencies in State laws, which permit action by dominant stockholders in corporations with small regard to the wishes of other investors in the enterprise (Investment Trust Study Proceedings Questionnaire in the matter of Equity Corporation, et al).

In the year 1935 The Equity Corporation acquired or brought under its direct control by merger or consolidation net assets of 12 corporations amounting to almost \$50,000,000. This was done under the laws of the States of Delaware and Maryland. The mergers all affected Delaware corporations and were all consummated under the Delaware law. Thus, Interstate Equities Corporation and Chain & General Equities Inc., were merged into Equity on March 25, 1935. And Reliance International Corporation and American, British & Continental Corporation were merged into Equity on September 6, 1935. In addition, eight corporations—seven incorporated in Maryland and one in Delaware—were consolidated to form American General Corporation, a subsidiary of Equity, on November 23, 1935.

The Delaware statutes authorize merger or consolidation by the vote of "stockholders of each such corporation representing two-thirds of the total number of shares of its capital stock, * * * each share entitling the holder thereof to one vote." As a result, the class of stock which has the most votes wields the greatest power, regardless of the proportion of the corporation's assets that may be applicable to it. In its most pernicious aspect such a provision may permit common stockholders, if sufficiently numerous, to bind the preferred stockholders of the corporation into a merger or consolidation on terms dictated by the interests of the common stockholders, even though all of the assets of the corporation are applicable to the preferred stock and none to the common.

The possibility just described is not a hypothetical one. In the case of three of the four corporations merged into Equity, the control of common stock alone, apart from its preferred stock holdings, gave Equity control of the vote necessary to effect the merger. And at the time of the mergers these common stocks had no asset values. This control of the common stock was also sufficient to give Equity control of the managements which determined the terms of the mergers. By these terms the preferred stockholders of the four corporations merged into Equity experienced severe losses in preference rights on liquidation. Before merger these stockholders were entitled to approximately \$9,800,000 on liquidation. After merger into Equity their preference on liquidation amounted to about \$6,200,000, a loss of over \$3,600,000 in preference rights. In addition, preferred stockholders of two of these corporations suffered appreciable losses in the asset values of their securities.

The provisions of the Maryland law, as distinguished from that of Delaware, ostensibly guard against this abuse. The applicable statutory provisions require a two-thirds vote of each class of voting stock for the adoption of a merger or consolidation agreement, as distinguished from two-thirds of all the capital stock. The history of Equity Corporation's expansion, however, illustrates how this apparent safeguard may be effectively circumvented.

Thus, the consolidation of eight corporations into American General Corporation has been referred to above. Seven of these eight companies had been incorporated in Maryland, and of these, five had preferred stock outstanding. Equity controlled virtually all the common stocks of these corporations. But control of the common alone, however overwhelming, would not enable Equity to force preferred stockholders of the Maryland corporations into the consolidation without their favorable vote as a separate class. Equity's holdings of the preferred stocks, on the other hand, were relatively small. In no instance did it control the two-thirds required for a favorable class vote. Its combined holdings of both preferred and common, however, were in excess of two-thirds of the total shares of both classes outstanding. Its predominant interest lay in the common stock, in direct conflict with the interests of preferred stockholders. Accordingly, it employed devices to deprive preferred stockholders of the protection of a class vote.

The corporate maneuver which effected this result was based on another provision of the Maryland corporation law. This stated that irrespective of statutory

requirements for action by vote of the holders of two-thirds of each class of stock, "such action shall be effective and valid if taken or authorized by such vote of its stockholders or members as may be required for such action by its charter." The charters of the five Maryland corporations contained no provisions on the point. They did, however, contain general authority to adopt charter amendments by a majority vote of all the outstanding stock entitled to vote.

Apparently pursuant to this authority the respective charters were amended to authorize approval of a merger or consolidation agreement by a two-thirds vote of "the shares then issued and outstanding and entitled to vote." Equity's own holdings were sufficient to adopt these amendments, and were thereupon sufficient to vote the consolidation. It was significant that the favorable vote cast by the preferred stock of each company was far less than two-thirds of that class.

The consolidation drastically affected the rights of the preferred stockholders. Annual dividend preferences of stockholders were reduced in amounts varying from \$0.25 to \$4.10 per share. Dividend arrearages in the neighborhood of \$4,000,000 were eliminated. Preferred stockholders suffered losses of approximately \$200,000 in the net asset values of their securities. These and other drastic changes in the rights of preferred stockholders were accomplished, in effect, solely by the vote of the common stock. Furthermore, the consolidation agreement which determined the participation of preferred and common stockholders in the new entity was drafted by representatives of Equity, whose interest was predominantly in the common stock. In some of the instances this stock was wholly without asset value.

One further circumstance may be noted. The charters of the Maryland companies themselves required a two-thirds class vote, and in one case apparently a unanimous vote, of the preferred stock for approval of any particular charter amendment, which would decrease the liquidating or dividend preferences, or the redemption prices, of the preferred stock. The consolidation, however, had exactly these effects. As a result of the charter amendment described above, the consolidation had been effected without a vote of the preferred stockholders as a class. And the amendments likewise had been effected without such class vote. Thus, the procedure accomplished by two steps what could not be accomplished by one.

While there may be some question as to the validity of the various steps taken to effect the consolidation, it should be pointed out that counsel for Equity and the consolidated company steadfastly maintained that everything was done in strict compliance with the Maryland law. And at this date, more than 2 years after the consolidation was consummated, American General Corporation remains in existence.

II. JURISDICTION SHOPPING

A few registration statements disclose the practice of forming a new corporation under the laws of a different State in order that a particular plan of reorganization may be carried out. The quotation below is an excerpt from the prospectus of Worthington Pump & Machinery Corporation (RS 2-3117), dealing with this question:

"As hereinbefore stated the Corporation was organized (February 17, 1937, under the laws of the State of Delaware) to succeed Worthington Pump & Machinery Corporation, a Virginia corporation, which was incorporated under the laws of the Commonwealth of Virginia on April 20, 1916. All the property, business and goodwill of the said Virginia corporation were transferred to the corporation, and all its debts and liabilities assumed by the corporation, on March 20, 1937. Such reincorporation was effected, pursuant to express authority in the charter of said predecessor Virginia corporation, in order to make possible the formulation of a feasible plan of recapitalization. As stockholders were informed at the time the vote was requested on the question whether to reincorporate, any effective plan of recapitalization of such predecessor Virginia corporation would have required, under the laws of the Commonwealth of Virginia, the approval of 90 percent in amount of each class of stock affected, and taking into consideration foreign stockholders, fiduciaries with limited powers, stock held in brokers' names, and those who could not be reached or would not respond, as a practical matter, such percentages were deemed unobtainable. The amendments to the charter of the corporation required to effect any such plan may, however, be authorized with the approval by holders of 66 2/3 percent in amount of each class of its stock under the provisions of its certificate of incorporation and the laws of the State of Delaware."

This is likewise illustrated in the registration statement of Gaylord Container Corporation (RS 2-3325):

"The corporations whose businesses were consolidated to form the company enjoyed a contractual relationship, first in written form and subsequently on the basis of oral agreements, from July 1927 to the time of consolidation, and Bogalusa Paper Co., Inc. (a Louisiana corporation), owned, prior to the consolidation, one-fourth of the issued and outstanding common stock and one-half of the issued and outstanding preferred stock of Robert Gaylord, Inc. (a Missouri corporation). The consolidation is considered a natural outgrowth of this relationship. To effect the consolidation, a change in domicile of Robert Gaylord, Inc. (a Missouri corporation), and certain changes in the organization of Bogalusa Paper Co., Inc. (a Pennsylvania corporation, formerly named Great Southern Lumber Co.), and Bogalusa Paper Co., Inc. (a Louisiana corporation), were adopted on advice of counsel." Prospectus, p. 1, 2.

B. SERVICES AND PROPERTY IN EXCHANGE FOR STOCK

The chief difficulty here centers in the company's issuing stock generally to affiliated or controlling interests, in consideration of the acquisition of tangible property, mining claims, patents, license agreements, right, and the like, and the attendant necessity of a valuation. The ensuing valuation of the property acquired is subject to serious question, especially in view of the fact that it represents solely an arbitrary valuation by a board of directors whose purpose usually is that of issuing a predetermined number of shares to the vendor as fully paid in accordance with governing statutes.

For example, subsequent to stop order proceedings in the matter of the registration statement of American Cereal Food Corporation (RS 2-2242), the balance sheet was footnoted as follows:

"While this sum is considered a fair price for the values received by the registrant, such valuation was arbitrarily fixed and considered with a view to issuing stock to the vendors of the intangibles in an amount sufficient to assure them control of the registrant."

The practice has been to set down a figure in the property account which represents cost to the company measured by the par value of the securities issued. The balance sheet caption, however, is required to be modified and described, or a footnote appended, to set forth the fact that the amount has been arbitrarily arrived at by the board of directors, representing the par of the securities issued, and that at the time such determination was made by the board, it consisted of so many directors who were also vendors (or a similar statement of affiliation adjusted to the circumstances).

In stop-order proceedings in the matters of Snow Point Mining Co., Inc. (1 S. E. C. 311) and Franco Mining Corporation (1 S. E. C. 285), the Commission found, and in its opinions so stated, the shares issued, ostensibly for property of the value of the aggregate par of the securities issued, actually were issued in accordance with the predetermined arrangements of the promoters to assure themselves control of the corporation. In stop-order proceedings in the matter of Brandy-Wine Brewing Co. (1 S. E. C. 123), the Commission found and so stated in its opinion that stock ostensibly issued for property and services was actually issued as a gift to the promoter.

In the Brandy-Wine opinion the Commission said with respect to this point: "Statutory provisions in the State of incorporation making values fixed by directors conclusive for certain purposes, in the absence of fraud, cannot foreclose this Commission's inquiry as to the truthfulness of a statement that a corporation has received services of a certain value, reasonably determined, nor prevent such a statement from being tested for truth under the standards set by the Securities Act. Under those standards, if the valuation of services is so grossly and unreasonably excessive as to be outside the range of reasonable difference of opinion, this item of \$71,000 in the balance sheet amounts to a misstatement of a material fact. To put it in other words, if a large portion of this stock was in reality donated to a promoter, the statement that it was issued for services is false."

A variation of the principle of statement of assets at cost is represented by the Commission's opinion in the matter of the registration statement of Unity Gold Corporation (1 S. E. C. 25). In that case, the Commission held that it was misleading and improper to include in the original cost of property the value of stocks issued for property and concurrently "donated back" as required by the purchase contract, even though the effect of such a transaction under the applicable State law was to render such shares "fully paid and nonassessable." It was further held in the same opinion that it was false and misleading to value stock at par in deter-

mining the cost of property when all other sales of said stock were at varying prices, all considerably below par.

C. SURPLUS RESTRICTIONS

Many registration statements on file with the Commission disclose that contribution of capital by one class of holders may provide a source of dividend payments to holders of other classes of the corporation's securities, and that dividends may be paid from capital surplus even though the payment would reduce the net assets of the company below the aggregate amount payable to the holders of a senior stock upon liquidation.

OLYMPIC FOREST PRODUCTS CO. (FILE NO. 2-3316)

Date and State of incorporation; character of business.—This company was incorporated January 25, 1930, in the State of Nevada and is engaged in the business of producing bleached sulphite pulps and, to a minor extent, in the business of manufacturing lumber and other wood products.

Capital stock and surplus accounts.—The balance sheet of the company, dated April 30, 1937, reflects the following capital stock and surplus accounts:

Capital stock.—Preferred stock, no par value, \$8 cumulative, nonparticipating, preference as to assets in dissolution \$100 per share plus accrued dividends, outstanding 39,997 shares. Common stock, no par value, outstanding 94,115 shares. Total capital stock, \$4,013,821; earned surplus, \$491,501; total, \$4,505,322.

Footnotes to this balance sheet contain the following statements with respect to the capital stock and surplus accounts as at the date of the balance sheet:

According to the opinion of counsel of the company, under the laws of the State of Nevada, the State of incorporation of the company, there is no legal restriction upon the company's payment of dividends out of surplus because of the fact that the liquidation value of each share of the preferred stock (\$100 per share plus accrued dividends) exceeds \$98 per share, at which the capital liability with respect to the preferred stock is recorded on the company's books.

Cumulative dividends of \$45.33 per share, aggregating \$1,813,197.33 accrued on preferred stock of the company to April 30, 1937, have not been declared or paid. The aggregate liquidating preferences and redemption rights, respectively, of the preferred stockholders are in excess of the total capital stock and earned surplus at April 30, 1937, as shown in the following tabulation:

	In event of—	
	Liquidation	Redemption
Number of shares.....	39,997	39,997
Per share.....	\$100.00	\$107.60
Total.....	\$3,999,700.00	\$4,299,677.60
Cumulative unpaid dividends.....	1,813,197.33	1,813,197.33
Total preference or right.....	5,812,897.33	6,112,874.93
Capital stock and earned surplus at Apr. 30, 1937.....	4,505,322.25	4,505,322.25
Excess.....	1,307,575.08	1,607,552.58

As of August 12, 1937, the capital of the company represented by the shares indicated above was reduced from \$3,919,700 to \$39,997. By amendment to the charter effective August 12, 1937, the following changes were made with respect to the capital stock of the company:

1. Creation of an unauthorized issue of 200,000 shares \$2 cumulative-preferred stock, par value \$25 per share, having preference over the other classes of stock in the event of liquidation in the amount of \$37.50 per share plus accrued dividends (convertible into common stock).

2. The title of the preferred stock (\$8 cumulative) was changed to \$8 preferred stock. The right to dividends and the preference as to liquidation was changed so as to rank junior to the \$2 cumulative-preferred stock.

3. The authorized common stock without par value was increased and changed to par value of \$1 per share.

4. The 94,115 shares of common stock, no par value, were changed into 188,230 shares of common stock par value \$1 per share on the basis of 2 shares of the

new stock for each share of the old. A comparative tabulation of the capital stock and surplus accounts follows:

	As at Aug. 12, 1937	As at Apr. 30, 1937
Number of shares authorized:		
\$2 cumulative preferred stock, par value \$25 per share.....	200,000	40,000
Preferred stock (\$8 cumulative), no par value.....	40,000	110,888
Common stock, no par value.....	500,000	
Common stock, par value \$1 per share.....		
Number of shares outstanding:		
Preferred stock (\$8 cumulative), no par value.....	39,997	94,115
Common stock, no par value.....	188,230	
Common stock, par value \$1 per share.....		
Capital stock and surplus:		
Amount of capital stock represented by preferred stock (\$8 cumulative), no par value, and by common stock, no par value.....		\$4,013,821.00
Amount of capital stock represented by \$8 preferred stock (cumulative), no par value, at \$1 per share.....	\$39,997.00	
Common stock, par value \$1 per share.....	188,230.00	
Capital surplus.....	3,879,709.00	
Earned surplus.....	397,386.25	491,501.25
Total.....	4,505,322.25	4,505,322.25

¹ Without consideration of the results of operations since Apr. 30, 1937, or of payments of dividends since Apr. 30, 1937. At Apr. 30, 1937, unpaid cumulative dividends on the preferred stock amounted to \$1,813,197.33.

The prospectus of the company contains the table set out below showing certain pro forma comparisons resulting from the assumption that the offer of exchange proposed to be made is accepted by all holders of the preferred stock.

	\$8 preferred stock (per share)	\$2 cumulative preferred stock (per unit)
Redemption basis:		
Redemption price.....	\$107.50	\$150.00
Accrued dividends to Apr. 30, 1937.....	45.33	
Accrued dividends, May 1 to Aug. 18, 1937, less dividends paid during that period Aug. 1 to Aug. 18, 1937.....	.40	.40
Total redemption value as of Aug. 18, 1937.....	153.23	150.40
Liquidation basis:		
Liquidation preference.....	100.00	150.00
Accrued dividends to Apr. 30, 1937.....	45.33	
Accrued dividends, May 1 to Aug. 18, 1937, less dividends paid during that period.....	.40	.40
Total liquidation preference as of Aug. 18, 1937.....	145.73	150.40
Assigned, or par value.....	98.00	100.50
Equity (net worth based on book values as at Apr. 30, 1937).....	112.64	112.64

Footnotes to the balance sheet in the above table state:

"According to the opinion of counsel of the company, under the laws of the State of Nevada, the State of Incorporation of the company, there is no legal restriction upon the company's payment of dividends out of surplus because of the fact that, as to the \$2 cumulative preferred stock, the liquidation value thereof (\$37.50 per share plus all accrued and unpaid dividends) exceeds its par value (\$25 per share), at which par value the capital liability with respect to the \$2 cumulative preferred stock will be recorded on the company's books, or because the amount paid in per share of \$2 cumulative preferred stock is or may be deemed to be in excess of the par value thereof."

Opinion of counsel.—A joint opinion of counsel with respect to restrictions on surplus was submitted to the company by Sullivan & Cromwell and Todd, Holman & Sprague. Excerpts from such opinion are quoted below:

"We have also examined the Nevada Corporation Law of 1935, as amended, which provides in sections 24, 25, and 26 that dividends may be paid to stockholders from a corporation's net earnings or from the surplus of its assets over its liabilities, including capital, as computed in accordance with the provisions of said sections.

"On the basis of the foregoing, it is our opinion that under the laws of the State of Nevada there is no legal restriction upon the company's payments of dividends out of surplus because of the fact that the liquidation value of each share of the \$2 cumulative preferred stock exceeds its par value (\$25 per share), at which par value the capital liability with respect to the \$2 cumulative preferred stock will be recorded on the company's books, or because the amount paid in per share of \$2 cumulative preferred stock is or may be deemed to be in excess of the par value thereof, or because of the fact that the liquidation value of the \$8 preferred stock exceeds the amount of capital (\$1) represented by each of the outstanding shares of \$8 preferred stock.

GRAYS HARBOR PULP & PAPER CO. (FILE 2-3314)

Date and state of incorporation.—The issuer was incorporated July 17, 1928, under the laws of the State of Delaware.

Character of business.—The company is engaged principally in the business of producing bleached sulphite pulps and, through Grays Harbor Corporation, in the manufacture and sale of sulphite printing and writing papers.

Capital stock and surplus.—The registrant's balance sheet dated April 30, 1937, shows the following capital stock and earned surplus accounts:

Capital stock:

Preferred stock, no par value, \$8 cumulative, nonparticipating, preference as to assets and dissolution \$100 per share plus accrued dividends, redeemable at \$107.50 per share plus accrued dividends, authorized 33,790 shares, outstanding 33,771 shares.....	\$3,588,497.50
Common stock, no par value, authorized 72,517 shares, outstanding 72,492 shares.....	
Earned surplus.....	844,533.34

Total of capital stock and surplus..... 4,433,030.84

Note 7 to the balance sheet contains the following statements with respect to restrictions on shares:

"By amendment to the certificate of incorporation effective August 13, 1937, the following changes were made with respect to the capital stock of the company:

"(1) The title of the preferred stock (\$8 cumulative, no par value) was changed to \$8 preferred stock (cumulative), no par value.

"(2) The creation of an authorized issue of 250,000 shares of \$2 cumulative preferred stock, par value \$25 per share, ranking junior to the \$8 preferred stock and, subject to prior payment, of the amount stated to be payable in respect of the \$8 preferred stock, having preference over the common stock, par value of \$1 per share, in the event of liquidation in the amount of, and entitled on redemption to, \$37.50 per share plus all accrued and unpaid dividends, convertible at any time on or before October 1, 1942, subject to the limitations and provisions of a certificate of incorporation, as so amended, at the rate of one share of common stock, par value \$1 per share, for each share of \$2 cumulative preferred stock. According to the opinion of counsel of the company, under the laws of the State of Delaware, the State of incorporation of the company, there is no legal restriction on the company's payment of dividends out of surplus because of the fact that the liquidation value of the \$2 cumulative preferred stock (\$37.50 per share, plus all accrued and unpaid dividends) exceeds the par value thereof (\$25 per share), at which par value the capital liability with respect to the \$2 cumulative preferred stock will be recorded on the company's books, or because the amount paid in per share of \$2 cumulative preferred stock is or may be deemed to be in excess of the par value thereof."

Securities offered.—This registration statement, filed July 28, 1937, covers an offering of 244,062 shares of \$2 cumulative preferred stock, \$25 par value, and a like number of shares of common stock, \$1 par, reserved for conversion of the preferred stock.

Opinion of counsel as to restriction on surplus.—An opinion of counsel submitted August 16, 1937, states in part as follows:

"* * * under the laws of the State of Delaware, there is no legal restriction on the company's payment of dividends out of surplus because of the fact that the liquidation value of \$37.50 per share plus all accrued, unpaid dividends of the \$2 cumulative preferred stock exceeds its par value (\$25 per share), at which par value we are advised the capital liability with respect to the \$2 cumulative preferred stock will be recorded on the company's books, or because the amount paid in per share of \$2 cumulative preferred stock is or may be deemed to be in excess of the par value.

"In giving the foregoing opinion, we are, of course, not passing upon the propriety or appropriateness of the declaration of any particular dividend at any given time, as that would have to be examined in the light of all the surrounding facts and circumstances at the time of any such proposed declaration."

Name and address of counsel.—Sullivan & Cromwell, 48 Wall Street, New York, N. Y.

Any statement of company's intention as to dividend payment.—The registrant makes no statement of its intention with respect to a restriction of surplus.

DEWEY AND ALMY CHEMICAL CO. (FILE NO. 2-3387)

Date and State of incorporation.—The registrant was incorporated in June 1919, in the State of Massachusetts.

Character of business.—The company is engaged and presently intends to engage principally in the manufacture and sale of a diversified line of chemical products, rubber products, and other products related thereto in the United States and foreign countries. It specializes in the manufacture of compounded and fabricated specialties used by other manufacturers in connection with their manufacturing procedures. These products are principally made for and sold to manufacturers of metal containers and closures for glass containers, the shoe industry, physicians and hospitals, and the cement industry.

Capital and surplus accounts.—The balance sheet of the company as at June 30, 1937, reflects the following capital stock and surplus accounts:

Capital stock without par value (note A):	
Prior preference, \$7 cumulative (callable at \$100 per share), 8,213 shares issued.....	\$586, 496. 88
Preferred, \$7 cumulative (callable at \$105 per share), 22 shares issued.....	880. 00
Class A preferred, \$7 cumulative (callable at \$105 per share), 55 shares issued.....	2, 200. 00
Class B preferred, \$7 cumulative (callable at \$105 per share), 17,930 shares issued.....	699, 270. 00
Common, 2,400 shares issued.....	60, 000. 00
Class A common, 57,944 shares issued.....	147, 539. 63
Total.....	1, 496, 386. 51
Capital surplus (note B) (p. 26).....	331, 688. 81
Total.....	1, 828, 075. 32
Deduct Treasury stock, 3,647 shares of class B preferred and 1 share of class A common, at cost.....	279, 546. 50
Balance.....	1, 548, 528. 82
Earned surplus since Jan. 1, 1935 (including \$92,103.92 undistributed earnings of subsidiaries) (p. 24).....	493, 243. 05

The following footnotes to the company's balance sheet relate to the capital stock and surplus accounts:

"The per share liquidating value of each class of preferred stock outstanding at June 30, 1937, was \$100 per share and accrued dividends and the aggregate amounts, other than accrued dividends, to which the several classes of preferred stock outstanding at June 30, 1937 (exclusive of treasury shares) would be entitled in liquidation were on prior preference \$7 cumulative, \$821,300; on preferred \$7 cumulative, \$2,200; on class A preferred \$7 cumulative \$5,500; and on class B preferred \$7 cumulative, \$1,428,300.

"The new preferred stock which the company proposes to offer in exchange for its outstanding prior preference and class B preferred stocks is entitled in liquidation to \$100 per share and accrued dividends. The capital stock account for the new preferred stock will be credited with \$39 in respect of each share of this stock

issued in exchange. Based on the maximum number of shares (22,496) that could be issued under the exchange offer, the aggregate liquidating value (exclusive of accrued dividends) of the new preferred shares would exceed by \$1,372,256 the amount for that number of shares at \$39 per share.

"The company represents that its present intention is not to limit the payment of dividends on account of the liquidating values of its outstanding preferred stocks or of its new preferred stock being in excess of the respective amounts therefor carried or to be carried in capital stock accounts. However, when preferred shares are redeemed or repurchased for retirement at prices in excess of the amounts then carried therefor in capital stock account, surplus available for dividends will be reduced by such excess."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed August 31, 1937, consisted of preferred and common stock.

Attorneys' opinion as to restrictions on surplus.—Counsel for the company make the following statement:

"We understand that the new preferred stock which is as yet unissued will be entitled upon winding up to receive \$100 per share and accrued dividends and no more. We further understand that the board of directors have voted that when and if the preferred stock is issued in accordance with the proposed plan of recapitalization the stock issued will be carried on the preferred capital stock account at \$39 per share.

"There are no restrictions imposed by the agreement of association as most recently amended or by the statutes of Massachusetts, and although there are very few Massachusetts decisions which cast any light upon the point, we are of the opinion that there are no restrictions imposed by the case law of Massachusetts, upon the availability of capital surplus or earned surplus for dividends upon the shares of prior preference and class B preferred stock, or upon the shares of the as yet unissued preferred stock, as a consequence of the fact that the liquidating value of the shares of each of these classes is or is to be in excess of the value at which such shares are carried in the capital stock account. The agreement of association as most recently amended provides that dividends upon the class B common and common shares may be declared only out of earned surplus and current profits."

Name and address of attorney.—This opinion was submitted by Gaston, Snow, Saltonstall, Hunt & Rice, 82 Devonshire Street, Boston, Mass.

Any statement of company's intention as to dividend payment.—The company's statement with respect to its intention as to the payment of dividends has been indicated above.

INDIANA ASSOCIATED TELEPHONE CORPORATION (FILE NO. 2-3803)

Date and State of incorporation; character of business.—This company was organized February 5, 1930, in the State of Indiana, and is engaged in the business of providing telephone service to 33 communities and surrounding territories in the State of Indiana.

Capital stock and surplus accounts.—The balance sheet of the company reflects the following capital stock and surplus accounts:

Capital stock:

Preferred stock \$6 cumulative series without par value, entitled in liquidation to \$100 per share, issued and outstanding 15,750 shares, stated at.....	\$1, 449, 000
Common stock without par value, issued and outstanding 63,000 shares, stated at.....	1, 890, 000

Total.....	3, 339, 000
Earned surplus.....	429, 467

Securities to be offered.—The securities proposed to be offered under the registration statement filed February 17, 1938, consists entirely of preferred stock.

Opinion of counsel with respect to restrictions on surplus.—The prospectus of the company contains the following statement:

"Counsel have stated that they are of the opinion that under the existing laws of Indiana applicable thereto for the purpose of determining the amount of earned surplus available for the payment of dividends by an Indiana corporation such surplus is not required to be restricted by an amount equal to the difference between the aggregate amount of capital account represented by such corporation's capital stock than having a preference on liquidation and the

aggregate liquidating value thereof, and they have further given their opinion that the courts of Indiana would not, under existing Indiana law applicable thereto, enjoin the payment of such dividends upon the theory that such a restriction should exist.

"The company has no present intention of itself, imposing any such restriction in its own case."

Name and address of attorney.—Attorney's opinion in this case was submitted by Schubring, Ryan, Petersen & Sutherland, Madison, Wis.

KINSEY DISTILLING CO. FILE (NO. 2—3520)

Date and State of incorporation.—This company was incorporated January 9, 1934, in Pennsylvania.

Character of business.—Registrant is engaged in the manufacture and sale of whisky.

Capital stock and surplus accounts.—The balance sheet of the registrant dated September 30, 1937, reflects the following capital stock and surplus accounts:

Prior preferred stock, par value \$10; issued and outstanding 11,984 shares.....	\$119, 840
Preferred stock \$5 par value; outstanding 60,000 shares ¹	300, 000
Common stock, par value \$1; outstanding 60,000 shares.....	60, 000
Total.....	479, 840
Surplus arising from revaluation of plant assets.....	21, 392
Paid-in surplus.....	20, 590
Earned surplus.....	81, 304

¹ In case of liquidation after payment of amounts due on the prior preferred stock the preferred stock is entitled to \$10 a share and accumulated dividends thereon before any payment shall be made on the common stock.

A footnote to the balance sheet contained the following statements:

"In the opinion of counsel, the payment of dividends in cash or property out of any surplus arising from an increased but unrealized appreciation in value or revaluation of fixed assets is prohibited. Until the appreciation in value is actually realized, dividends from such a surplus may not be paid other than in the form of a share dividend.

"Paid-in surplus of \$20,590 resulted from the sale of 10,295 shares of preferred stock at a premium of \$2 per share.

"In the opinion of counsel, dividends may be paid from paid-in surplus but only upon shares having a preferential right to receive dividends and provided that the source of such dividends shall be disclosed to the shareholders entitled thereto prior to or concurrently with the payment of such dividends.

"In the further opinion of counsel, there are no statutory restrictions in the Commonwealth of Pennsylvania against the payment of dividends out of paid-in surplus by reason of any differential between the par value and the liquidating value of preferred stock and payment of dividends from paid-in surplus cannot be enjoined by a court of equity by reason of any such existing differential.

"In the opinion of counsel, there are no statutory restrictions in the Commonwealth of Pennsylvania against the payment of dividends out of earned surplus by reason of any differential between the par value and the liquidating value of preferred stock and payment of dividends from earned surplus cannot be enjoined by a court of equity by reason of any such existing differential. It is the intention of the registrant to pay dividends on the prior preferred stock, the preferred stock, and the common stock from earned surplus as and when declared by the board of directors, without regard to any differential between the par value and the liquidating value of the preferred stock which may exist at the time of such payments.

"It is the intention of the registrant to pay dividends on the prior preferred stock and the preferred stock from paid-in surplus as and when declared by the directors, without regard to any differential between the par value and the liquidating value of the preferred stock which may exist at the time of such payment. The registrant will not pay dividends on the common stock from paid-in surplus, since dividends from such paid-in surplus are restricted by the laws of the Commonwealth of Pennsylvania to shares having a preferential right to receive dividends."

Securities offered.—The securities proposed to be offered under the registration statement filed November 15, 1937, consist of 60,000 shares of prior preferred,

which were to be offered to the public for cash, and other shares of preferred and common stock reserved for conversion.

Attorney's opinion.—The attorney's opinion in this case, quotations from which are stated above, was submitted to the company by Thomas C. Eagin, 1222 Lincoln Liberty Building, Philadelphia, Pa.

MANUFACTURERS FINANCE CO. FILE NO. 2-3518

Date and state of incorporation.—This company was incorporated December 8, 1909, in the State of Delaware.

Character of business.—Registrant is engaged in the purchase of advances on or loans on open accounts receivable, notes receivable, and any other form of commercial paper arising from commercial transactions and from the sale of merchandise by manufacturers, wholesalers, jobbers, etc.

Capital stock and surplus accounts.—The unconsolidated balance sheet of the registrant as at September 30, 1937, reflects the following capital stock and surplus accounts:

Capital stock:	
7 percent cumulative preferred, \$25 par, authorized \$8,000,000; outstanding.....	\$2, 155, 600. 00
8 percent cumulative second preferred, par \$25 authorized \$5,000,000; outstanding.....	(¹)
\$1.75-\$2.50 cumulative second preferred, no par, stated value \$5, authorized \$600,000; outstanding.....	2\$, 155. 00
Common shares, no par, stated value \$1, authorized \$157,500; outstanding.....	80, 000. 00
Surplus: Not subdivided as between paid-in, capital, and earned surplus.....	427, 157. 05
Total of capital stock and surplus.....	2, 954, 912. 05

¹ None.

The following footnote appears in the registrant's balance sheet as to restrictions of surplus:

"* * * Counsel's opinion * * * indicates (1) that there is no restriction upon the registrant's surplus under the Delaware law but that the charter as amended in June 1934 provides that no dividends shall be paid on the common stock if after such payments the capital represented by the second preferred stock and common stock together with the surplus shall be less than an amount equal to \$25 per share for all shares of second preferred stock then outstanding, and (2) in the event the board of directors were to attempt to pay a dividend on the common stock, even though all preferred stock dividend arrearages have been paid, when the capital and surplus available for the second preferred stock, after payment of such common stock dividend, would not be equal to the total amount payable to the holders of second preferred stock in liquidation, a court of equity of competent jurisdiction would have the authority and would enjoin the payment of such proposed dividend."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed November 13, 1937, consisted of collateral trust notes in the aggregate amount of \$2,000,000.

Attorney's opinion as to restrictions on surplus.—Counsel for the company submits a lengthy opinion as exhibit N, filed as an amendment to the registration statement on December 7, 1937, in which, among other things, it is stated that (1) no dividends may be paid either out of net profits or surplus on the \$1.75-\$2.50 cumulative second preferred stock until after all arrearages of dividends on the 7 percent cumulative preferred stock have been paid, (2) no dividends may be paid either out of net profits or surplus on the common stock until after all arrearages of dividends on the 7 percent cumulative preferred stock and on the \$1.75-\$2.50 cumulative second preferred stock have been paid and until the capital represented by such preferred stock and common stock together with the surplus shall be an amount equal to \$25 per share for all shares of second preferred stock then outstanding, and (3) that there is no restriction either under the laws of Delaware or under the charter except that where stock is acquired by the issuer either in whole or in part out of surplus, the surplus would be consequently reduced and in making subsequent payments of dividends on the common stock it would be necessary to make a new summation in order to determine whether

the remaining capital and surplus was sufficient to protect the amounts to which the second preferred stock is entitled on liquidation.

Name and address of attorney.—H. Webster Smith, 610 Mercantile Trust Building, Baltimore, Md.

Any statement of company's intention as to dividend payment.—The company makes no statement of its intention to pay or not to pay dividends on the common or preferred stock.

UNITED DRILL & TOOL CORPORATION, (FILE 2-3494)

Date and State of incorporation.—This company was incorporated August 1926 in the State of Michigan.

Character of business.—The company is engaged principally in the manufacture and sale of twist drills, reamers, interchangeable punches, and other similar metal-cutting tools.

Capital stock and surplus accounts.—The balance sheet of the company as at October 31, 1937, reflects the following capital-stock and surplus accounts:

Capital stock: Class A stock, no-par value, preferred as to cumulative dividends at the rate of 60 cents per share per annum, callable at \$10 per share, and entitled in liquidation to \$10 per share, issued 261,859 shares; class B stock, no-par value, issued 261,859 shares...	\$654, 647
Surplus: Capital surplus.....	1, 005, 263
Earned surplus accumulated since Jan. 1, 1934.....	540, 575

Total of capital stock and surplus..... 2, 200, 485

Footnotes to the balance sheet contain the following statements:

"The company has not assigned and has no present intention of assigning any separate stated value to the class A stock or the class B stock. The aggregate liquidating value of the 261,859 outstanding shares of class A stock is \$2,618,590, which is \$1,963,942 more than the capital stock liability for class A and class B stock shown above. It is the opinion of counsel for the company that neither at common law nor under any applicable Michigan statute is there any requirement that surplus be restricted in the payment of dividends on class B stock to the extent of the excess thereof over the difference between the aggregate stated value of the class A and class B stock and the aggregate liquidating value of the class A stock, and further that a court of equity would not have the power to enjoin the payment of dividends for such reason out of any funds otherwise legally available for the payment of dividends. The secretary of the company has stated that consistent with the opinion of counsel it is not the intention of the company to restrict the payment of dividends on its class B stock on account of the deficiency as between the aggregate liquidating value of class A stock and the aggregate stated value of class A and class B stock. Thus, in the event of liquidation, dissolution, or winding up of the affairs of the company, a capital deficiency of \$1,963,942 would exist in the case of the class A stock and no capital whatsoever would be available for the class B stock."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed October 29, 1937, consist of class B stock to be offered at a price ranging from \$2 per share to \$3.25 per share.

Name and address of attorney.—An opinion of counsel, summarized above, was submitted to the company by the firm of Hill, Hamblen, Essery & Lewis, Detroit, Mich.

PAYNE FURNACE & SUPPLY CO., INC. (FILE NO. 2-3490)

Date and State of incorporation.—This company was incorporated in March 1937 in the State of California.

Character of business.—It acquired the business of its predecessor and manufactures heating equipment and air-conditioning equipment.

Capital stock and surplus accounts.—The balance sheet of the company, dated July 31, 1937, reflects the following capital stock and surplus accounts:

Capital stock:

Cumulative convertible 60-cent preferred, series A, no-par value; outstanding 44,109 shares.....	\$352, 872
Common, par value \$1 per share; issued and outstanding 55,891.....	55, 891
Capital not represented by shares outstanding (excess of amount paid in on preferred shares converted to common shares over par value of common shares issued in exchange therefor).....	6, 237
Total stated capital.....	<u>415, 000</u>

Surplus:

Paid in.....	267, 971
Deficit (dividends paid in excess of earnings).....	6, 308
	<u>261, 663</u>

An analysis of the paid-in surplus account shows that \$159,583 represents excess of net assets acquired over par or stated value of stock issued therefor and that \$140,000 represents excess cash received over par or stated value of capital stock sold, less organization expenses.

A footnote to the balance sheet contained the following statements with respect to restrictions on surplus:

"The aggregate stated value of the 44,109 shares of preferred stock outstanding at July 31, 1937, was \$352,857. The liquidation preference of such shares in the event of a voluntary liquidation, and the redemption price of such shares, is \$12.50 per share, or an aggregate amount of \$551,362, being \$198,490 in excess of the stated value of such shares. Counsel for the company has rendered his written opinion in which he states that in his opinion the company may legally pay dividends on preferred stock from such paid-in surplus, however derived, provided a notice as to the source of such dividends is given to the recipients thereof prior to or concurrently with the payment thereof. Said counsel further states that in his opinion a court of equity would not enjoin payment of such dividends from such paid-in surplus provided an appropriate notice as above described is given prior to or at the time of such payment. Said counsel further states that in his opinion such paid-in surplus, whether arising out of earned surplus of the company's predecessor or by reason of issuance or proposed issuance of common stock for a consideration or considerations in excess of the par value thereof is not available for dividends on the common stock.

"It is the present intention of the management of the company to pay out of said paid-in surplus account dividends on the preferred stock until such time as the company may have opportunity to accumulate an earned surplus."

It should be noted that the offering being made pursuant to this registration statement consists of 25,000 shares of preferred stock without par value and 5,000 shares of common stock, par value \$1 per share. The company states, with respect to this offering, that—

"In the event of the issuance of the 25,000 shares of preferred stock now proposed to be offered under the registration statement, the stated value of such shares will be the entire net consideration to be received therefor by the company (\$6.40 a share). The liquidation preference of such shares in the event of a voluntary liquidation and the redemption price of such shares is \$12.50 per share or a total aggregate amount of \$312,500, which amount will exceed the stated value of such shares computed as above set forth.

"In the event of the issuance of the 5,000 shares of common stock of the par value of \$1 per share, now proposed to be offered under the registration statement, the amount of \$1 per share will be credited to stated capital and the balance of the net consideration to be received therefrom (\$5.40 per share) will be credited to paid-in surplus."

Attorney's opinion.—A lengthy opinion of counsel, referred to above, was submitted to the company with respect to the legality of dividends. This opinion was prepared by Arthur L. Erb, of Beverly Hills, Calif.

REED DRUG CO. (FILE NO. 2-3421)

Date and state of incorporation.—The company was incorporated August 1937 in the State of Delaware and acquired the assets of a predecessor which included the common stock of two companies which are now wholly owned subsidiaries of the registrant.

Character of business.—The company is engaged in the operation of drug stores in Wisconsin and Illinois.

Capital stock and surplus accounts.—The balance sheet of the company, dated August 9, 1937, reflects the following capital stock and surplus accounts:

Capital stock:

Class A, convertible, par value \$1 per share; issued 35,000 shares..	\$35,000
Common stock, without par value (stated value 10 cents per share); issued 115,000 shares.....	11,500

48,500

Paid-in surplus..... 70,177

The paid-in surplus on the books of the registrant represents the excess of book values of assets of the predecessor company over par value of the registrant's stock issued therefor.

Footnotes to the balance sheet contain the following statements with respect to the restriction of surplus:

"In the event of liquidation, dissolution, or winding up the affairs of the corporation, the holders of the class A stock are entitled, before any assets are distributed to the holders of the common stock, to be paid in addition to all cumulative dividends unpaid or in arrears \$5 per share, or a total of \$175,000 for the class A shares now outstanding. This exceeds the present net tangible assets of \$116,077 by \$58,322, or by approximately \$1.67 per share. The aggregate difference between the par or stated value of the class A stock of \$1 per share and the liquidating value thereof of \$5 per share is \$140,000, or \$4 per share. If the contemplated sale of the 30,000 shares of class A stock is effected, the proceeds thereof to be received by the corporation would constitute paid-in surplus in the sum of \$97,500 and in the event of the effectuation of said contemplated sale aforesaid the liquidating value of all class A stock that would then be outstanding would at the rate of \$5 per share aggregate \$325,000 which would exceed by \$80,822, or by approximately \$1.25 per share, the value of the net tangible assets of the corporation that would then exist in the sum of \$244,177.

Attorney's opinion as to restrictions on surplus.—Singer & Singer, counsel for the corporation, has given an opinion that in the event of the lawful declaration and payment of dividends on the class A or common stocks issued by the corporation, or on both, there is (1) no restriction or prohibition in the laws of Delaware that would lawfully prevent the dividends so paid from being charged to or against the presently existing paid-in surplus or from being charged to or against the paid-in surplus that would be derived from the sale of said 30,000 shares of class A stock, or from being charged to or against the combined paid-in surplus above mentioned or that restricts the availability of surplus for charges against it for dividends to the amount of such surplus in excess of the amount by which the liquidating value of the class A stock exceeds the par or stated value thereof, even though the liquidating value of the class A stock presently outstanding exceeds the value of the present net tangible assets as above set forth and would exceed the value of the net tangible assets as set forth above if the sale of 30,000 shares of class A stock is effected; and (2) that a court of equity could not lawfully enjoin the corporation from paying from or charging to or against said surplus accounts, or either of them, or a combination of them, dividends lawfully declared on class A stock or dividends lawfully declared on the common stock, if at the time of the declaration of dividends on the common stock there were no defaults in the payments of dividends on the class A stock.

The board of directors of the corporation at a special meeting held November 9, 1937, adopted a resolution providing that any dividends lawfully declared and paid on the class A stock and no-par common stock, or either of them, will not be paid from or charged to or against the paid-in surplus accounts, or either of them, or the two combined, described as follows: (a) The paid-in surplus of the corporation presently existing as shown in its balance sheet as of June 30, 1937; (b) the paid-in surplus created by or derived from the sale of the 30,000 shares of class A stock.

Securities offered.—As indicated above, the company proposed to offer, pursuant to the registration statement filed September 21, 1937, 30,000 shares of class A stock together with common stock given as a bonus at the rate of 1 share for each 10 shares of class A stock.

Name and address of attorney.—The attorney's opinion referred to above was submitted to the company by Singer & Singer, 706 Public Square Building, Cleveland, Ohio.

THE HILTON-DAVIS CHEMICAL CO. (FILE NO. 2-3406)

Date and State of incorporation.—The registrant was incorporated August 7, 1930, in the State of Delaware.

Character of business.—The company acquired the business of a predecessor and is engaged under the same management in the manufacture of a diversified line of chemicals.

Capital stock and surplus accounts.—The balance sheet of the company as at June 30, 1937, reflects the following capital stock and surplus accounts:

Capital stock:

Preferred stock, \$5 par value, authorized 100,000 shares; 27,160 shares outstanding, entitled in liquidation to \$25 per share, plus accumulated dividends.....	\$135,800
Common shares, \$1 par value, authorized 200,000 shares; 104,554 shares issued.....	104,554
	<hr/> 240,354 <hr/>

Surplus:

Capital surplus.....	831,350
Earned surplus.....	48,793
	<hr/> 880,143 <hr/>

Total of capital stock and surplus..... 1,412,617

The balance sheet of the company contains the following footnote with respect to the capital stock and surplus accounts:

"The aggregate amount to which the preferred stock would be entitled in liquidation is \$679,000.

"In the opinion of counsel of the company there is no legal restriction on surplus by reason of the fact that the amount to which the convertible preferred stock would be entitled in liquidation, \$25 per share, exceeds the par value of \$5 per share.

"It is the present intention of the company to limit the payment of dividends to the amount of surplus in excess of \$20 per share of preferred stock outstanding."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed September 9, 1937, consisted of preferred and common stock. The offering price of the preferred stock was \$27.50, to net the company \$25 per share. The offering price of the common stock differs with respect to three different blocks. The offering price of the first and second blocks was \$23.75 per share, and with respect to the third block, \$27.50 per share. The net proceeds to the company from the common stock was stated to be \$13.50 for the first block, \$20 for the second block, and \$25 for the third block.

Attorneys' opinion as to restrictions on surplus.—An opinion of counsel was submitted to the company by the firm of Walte, Schindel & Bayless, Union Central Life Building, Cincinnati, Ohio. This opinion, however, did not discuss the question of the legality of dividend payments from capital surplus.

FIRST STATE TRUST CO. (FILE NO. 2-3292)

Date and State of incorporation.—This company was organized in April 1937 in the State of Delaware.

Character of business.—As and when the company receives a minimum capital and surplus of \$20,000, it will engage in the business of financing premiums on all forms of fire and casualty insurance policies which have a definite return premium and which are issued by insurance companies acceptable to the registrant. The company intends also to engage in the business of acting as resident agent for Delaware corporations, as trustee under trust indentures other than those requiring the management of personal funds, and acting as registrar and transfer agent for corporate securities.

Capital stock and surplus accounts.—This company has authorized 200,000 shares of class A common stock, par value \$1 (liquidating value \$3), and 10,000 shares of class B common stock, no-par value. The securities proposed to be offered under the registration statement filed July 13, 1937, consist of 190,000 shares of class A common stock, at a price of \$2.25 per share, to net the company

\$1.60. Accordingly, therefore, a paid-in surplus of \$0.60 a share will result from the sale of this stock which apparently may be used by the company to pay dividends on either class of the registrant's stock. A footnote to the balance sheet states as follows:

"The surplus is not restricted by virtue of the State laws or otherwise to the extent of the excess of the liquidating value of the class A common stock either in voluntary or involuntary liquidation over the par value thereof."

The accountant's certificate contains this comment:

"I further certify that I have examined the certificate of incorporation of said company, its bylaws, the minutes of its meetings, and the opinion of counsel and find that the surplus is not restricted by these to the extent of the excess of the liquidating value of the class A common stock, either in voluntary or involuntary liquidation, over the par value thereof."

Attorney's opinion as to restrictions on surplus.—The company's attorneys submitted an opinion which states in part, "Unless, therefore, some restriction is provided in your certificate of incorporation or the resolution of your directors to the contrary, the only restriction on the capital of your company will be the par value of its issued shares, any excess received in payment of the stock being capital surplus under the provisions of section 14" (of the Delaware corporation law). (Sec. 14 provides that directors are permitted to determine that only a part of the consideration which shall be received by a corporation for its shares shall be capital—in this case, the par value.)

Name and address of attorney.—This opinion was submitted to the company by Satterwaite & Foulk, Dupont Building, Wilmington, Del.

OREAMERIES OF AMERICA, INC. (FILE NO. 2-3283)

Date and State of incorporation.—This company was incorporated February 1930 in the State of Delaware.

Character of business.—Registrant is both a holding and an operating company. The products handled by registrant and its subsidiaries are numerous but consist principally of milk, cream, buttermilk, cottage cheese, butter, ice cream, ice-cream novelties, dairy and agricultural products and supplies, orangeade, ice, and beer.

Registrant was created as a result of a consolidation with all of its totally owned subsidiaries (six in number) on the date above stated.

Capital stock and surplus accounts.—The unconsolidated balance sheet of the registrant as at December 31, 1936, reflects the following capital stock and surplus accounts:

Capital stock:

Preferred shares, \$3.50 cumulative, convertible, series A, no-par value (redeemable at \$52.50 per share, liquidation value \$50 per share), authorized 40,000 shares; outstanding 25,034 shares.....	\$1, 008, 270
Common shares, no-par value, authorized 550,000 shares; issued and outstanding 382,004 shares.....	2, 937, 201
	<hr/> 4, 035, 471 <hr/>

Surplus (including amounts carried over from constituent companies in 1936 statutory consolidation):

Paid in.....	639, 818
Earned.....	502, 620
	<hr/> 1, 142, 434 <hr/>
Total of capital stock and surplus.....	5, 177, 905

The following footnote to the preferred-stock account appears in the registrant's balance sheet on liquidation value of preferred shares:

"According to opinion of counsel of the company, there is no legal restriction on surplus (consolidated or unconsolidated) because of the fact that liquidation value of preferred shares, \$50 per share, exceeds the average amount per share, \$48.14, at which such preferred shares are stated in the balance sheets."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed July 3, 1937, consisted of common stock.

Attorneys' opinion as to restrictions on surplus.—Counsel for the company make the following statement:

"In our opinion from an examination of the laws of the State of Delaware which are applicable and from a further examination of the agreement of consolidation and the bylaws of Creameries of America, Inc., there are no legal restrictions upon either the consolidated or unconsolidated surplus of said corporation arising out of the fact that the liquidation value of the preferred shares (\$50 per share) exceeds the average stated value per share (\$43.14) as carried on said corporation's balance sheet."

Name and address of attorney.—This opinion was submitted to the company by Mitchell & Johnson, 333 Roosevelt Building, Los Angeles, Calif.

Any statement of company's intention as to dividend payment.—The company makes no statement of its intention to pay or not to pay dividends on the common or preferred stock.

AIR ASSOCIATES, INC. (FILE NO. 2-3000)

Date and State of incorporation, character of business.—This company was incorporated July 1, 1927 in the State of New York and is engaged in the business of selling materials, supplies, parts, and accessory equipment used in the construction, maintenance, and operation of aircraft. These include hardware, propellers, wheels, tires, instruments, electrical equipment, hydraulic control apparatus, replacement parts, clothing and personal equipment, materials for aircraft manufacture, shop and factory supplies and equipment.

Capital stock and surplus accounts.—The balance sheet of the registrant, dated January 31, 1937, reflects the following capital stock and surplus accounts:

Capital and surplus:

Capital stock: \$7 (without par value), cumulative and convertible, liquidating value per share \$110 (aggregate \$301,620 plus accrued dividends), authorized 5,500 shares; outstanding 2,742 shares.	\$102,550
Common stock (without par value): Authorized 40,000 shares, outstanding 14,502 shares.	5,527

Stated capital.	108,077
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Surplus:

Capital (from reduction of capital May 1931, less deficit from operations to that date)	143,310
Earned (since May 5, 1931)	102,682

Total	354,078
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In addition to the balance sheet dated January 31, 1937, the company presents a pro forma statement of capital stock and surplus giving effect to a complete exchange of old shares pursuant to plan of recapitalization dated February 1, 1937. This pro forma statement appears as follows:

Capital stock: First preferred stock with par value of \$9 per share (\$7 cumulative and convertible); liquidating value, per share, \$110; aggregate, \$301,620, plus accrued dividends; authorized and issued, 2,742 shares.	\$24,078
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Common stock with par value of \$1 per share:

Common stock with par value of \$1 per share: Authorized, 250,000 shares; outstanding, 57,216 shares.	59,916
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Total	84,694
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Surplus:

Capital (from reductions of capital May 5, 1931, and Mar. 23, 1937, less deficit from operations to May 5, 1931)	166,802
Earned (since May 5, 1931)	102,682

Total	354,078
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The following footnotes to the capital stock and surplus accounts appear in the company's balance sheet:

"NOTE A.—Dividends on first preferred stock, cumulative from January 1, 1937, amounted to \$1,599 at January 31, 1937. Including such accrued dividends the liquidating value of the first preferred stock at January 31, 1937, amounted to \$303,219. Such liquidating value was \$50,859 less than the sum of the company's capital and surplus at that date."

"NOTE B.—As of the balance sheet date there were no restrictions in the certificate of incorporation of the company, or other governing instruments, on the payment of dividends on the common stock from surplus, even if such payments would reduce the net assets of the company below the aggregate amounts payable to preferred stockholders in the event of liquidation, except that such dividends can be paid only after dividends on the preferred stock for all past quarter-yearly dividend periods shall have been paid and the dividends thereon for the then current quarter-yearly dividend period shall have been paid, or declared and a sum sufficient for the payment thereof set apart. The certificate filed March 23, 1937, amendatory of the certificate of incorporation, contains a corresponding restriction to protect dividends on the first preferred stock."

The prospectus of the company contains the following statement in addition to the above with respect to such restrictions:

"There are, in the opinion of counsel for the company, no statutes or established rules of law which would prevent the payment from surplus, including capital surplus, of dividends on stock of any class other than the first preferred stock, even though such payment would reduce the net assets of the company below the aggregate amount payable to the holders of the first preferred stock upon liquidation, provided that such payment is not made for fraudulent purposes or in contemplation of the liquidation, dissolution, or winding up of the affairs of the company. However, it is not to be inferred that any such dividends will be paid, and it is not represented that the payment thereof would be proper or lawful. Counsel for the company state that they have not found any judicial decisions on the question and that they cannot say that under some circumstances a court might not hold that a dividend payment made from capital surplus would constitute in itself a pro rata liquidation of the company within the meaning of the provisions of the certificate of incorporation as amended, with respect to the rights of the first preferred stock on liquidation."

Securities offered.—The offering to which this registration statement related, filed March 27, 1937, consisted entirely of common stock.

Name and address of attorney.—The attorney's opinion in this case was submitted to the company by Debevoise, Stevenson, Plimpton & Page, 20 Exchange Place, New York, N. Y.

Any statement of company's intention as to dividend payment.—The company makes no statement of intention with respect to the payment of dividends.

THERMOID CO. (FILE NO. 2-213)

Date and State of incorporation.—This company was incorporated January 28, 1929, in the State of Delaware.

Character of business.—Registrant is primarily a holding company, owning and holding shares of capital stock of Thermoid Rubber Co., Southern Asbestos Co., and Thermoid, Ltd. It may also be considered as engaged in the businesses conducted by its subsidiaries, which includes the manufacture of brake lining, clutch facings, asbestos cloth and tape, and molded hose.

Capital stock and surplus accounts.—The unconsolidated balance sheet of the registrant as at September 30, 1936, reflects the following capital stock and surplus accounts:

Capital stock:

Convertible preferred (\$3 cumulative), entitled in liquidation to \$50 per share plus accrued dividends, authorized 50,000 shares of \$10 each, issued 42,104 shares	\$421,040.00
Common shares: Authorized 775,000 shares of \$1 each, issued 256,096 shares	250,096.00
Surplus: (After charging earned surplus, deficit of \$2,713,011.22 at Sept. 30, 1936)	1,266,243.47
Total of capital stock and surplus	1,043,379.47

The following footnote to the capital surplus account appears in the registrant's balance sheet:

"While it may be legally possible under the laws of the State of Delaware for the board of directors to pay dividends on common stock out of capital surplus, nevertheless, if dividends were so declared to such an extent as to reduce the capital and surplus of Thermoid Co., below the liquidation value of \$50 per share on the preferred stock, even though the par value of \$10 per share of such stock may be

maintained, it might be that the preferred stockholders would, in such case, be entitled at law or in equity to redress."

Securities offered.—The securities proposed to be offered pursuant to the registration statement filed December 7, 1936, consisted of first lien collateral trust 5 percent bonds in the aggregate amount of \$2,450,000.

Attorneys' opinion as to restrictions on surplus.—In connection with this registration statement, the registrant was asked to furnish an opinion of counsel with respect to any restrictions on surplus and distributions to common-stock holders which will reduce the net assets of the issuer below the aggregate amounts payable to preferred-stock holders in the event of liquidation. The opinion furnished by counsel covers eight pages and refers at length to opinions of the Delaware Supreme Court and their applicability to the points involved in the case of the registrant, without arriving at a definite conclusion in these matters.

Name and address of attorney.—This opinion was submitted to the company by Smyth & Tuttle, 40 Wall Street, New York, N. Y.

Any statement of company's intention as to dividend payment.—Note 6 to the registrant's balance sheet states:

"It is the present intention of the board of directors that no cash dividends shall be declared or paid on the common stock out of capital surplus, subject to there being no substantial change in the Federal or State laws which would render such policy inadvisable."

The summaries set forth below likewise relate to this question.

"According to the opinion of counsel of the company, under the laws of the State of Nevada, the State of incorporation of the company, there is no legal restriction upon the company's payment of dividends out of surplus because of the fact that the liquidation value of each share of the preferred stock (\$100 per share plus accrued dividends) exceeds \$98 per share, at which the capital liability with respect to the preferred stock is recorded on the company's books as stated in the answer to item 10A. Reference is made to following note 8" (p. 28, footnote No. 6 to the balance sheet).

In a separate communication to the Commission, opinion of counsel was furnished as to whether there would be any restriction of surplus to the extent that the par value of the \$2 preferred stock is less than the stated liquidating value thereof.

Excerpts from the opinion of counsel (Messrs. Sullivan & Cromwell and Messrs. Todd, Holman & Sprague) follow:

"We understand that the capital liability with respect to the \$8 preferred stock was, prior to the filing of a certificate of reduction of capital in the office of the secretary of state of Nevada and in the office of the clerk of Washoe County, Nev., on August 12, 1937, \$98 per share, and that after the filing of the said certificate of reduction of capital of the company as aforesaid, the capital liability with respect to each share of the \$8 preferred stock is \$1 per share, and that such stock has a liquidating value of \$100 per share, a redemption value of \$107.50 per share, and an accumulation of dividends in arrears as of April 30, 1937, of \$45.33 per share; the \$2 preferred stock has a liquidating value and a redemption value of \$37.50 plus accrued and unpaid dividends. We understand that to the extent that \$100.50 (the aggregate par value of four shares of \$2 cumulative preferred stock and one-half share of common stock) exceeds the capital for each share of \$8 preferred stock, that is, \$1, the difference will be debited (1) to the extent of \$97 to capital surplus (thereby, with respect to each share of \$8 preferred stock so exchanged, extinguishing the credit to capital surplus arising from the reduction of capital, represented by the \$8 preferred stock, from \$98 per share to \$1 per share upon the filing of said certificate of reduction of capital), and (2) to the extent of \$2.50, to earned surplus."

"We have also examined the Nevada Corporation Law of 1935, as amended, which provides in sections 24, 25, and 26, that dividends may be paid to stockholders from a corporation's net earnings or from the surplus of its assets over its liabilities, including capital, as computed in accordance with the provisions of said sections."

"On the basis of the foregoing, it is our opinion that under the laws of the State of Nevada, there is no legal restriction upon the company's payment of dividends out of surplus because of the fact that the liquidation value of each share of the \$2 cumulative preferred stock exceeds its par value (\$25 per share), at which par value the capital liability with respect to the \$2 cumulative preferred stock will be recorded on the company's books, or because the amount paid in per share of \$2 cumulative preferred stock is or may be deemed to be in excess of the par value thereof, or because of the fact that the liquidation value of the

\$8 preferred stock exceeds the amount of capital (\$1) represented by each of the outstanding shares of \$8 preferred stock."

Wilson & Co., Inc. (RS 2-3090). The balance sheet dated October 31, 1936, filed with the registration statement showed that the capital account of the registrant totaled \$41,125,655, consisting of \$22,724,800 allocated to 324,783 shares of 6-percent cumulative preferred stock without par value, and \$18,400,855 allocated to 2,001,163 shares of no-par common stock. Counsel rendered the following opinion:

"We have considered the question as to whether or not, in connection with the payment of dividends on your outstanding common stock, there is any restriction upon the surplus of your company arising from the fact that the capital of your company allocated to its outstanding \$6 cumulative preferred stock is \$22,724,800 and the liquidating value of such preferred stock is \$32,478,300.

"We are of the opinion, in the light of the provisions of section 34 of the Delaware General Corporation Law and the other sections of that law therein referred to and in the light of the pertinent provisions of your amended certificate of incorporation effective November 30, 1925, and the certificate of amendment of your certificate of incorporation filed and recorded February 23, 1935, that there is no such restriction upon the surplus of your company prior to liquidation of your company.

"In this connection it may be not irrelevant to point out that as appears from the balance sheet of your company as at October 31, 1936, the total capital of your company, namely \$41,125,655, is \$8,647,355 in excess of the liquidating value of your company's outstanding \$6 cumulative preferred stock and that the \$6 cumulative preferred stock of your company is entitled to priority to the extent of its liquidating value over your company's common stock upon any liquidation, dissolution, or winding up of your company."

There are set forth below two opinions of counsel bearing upon this question:

EXHIBIT F-3

LOCK HAVEN, PA., February 25, 1938.

PIPER AIRCRAFT CORPORATION,

Lock Haven, Pa.

DEAR SIR: You asked me for my opinion as to whether under the laws of Pennsylvania there is any restriction on the payment of dividends by you on your convertible preferred stock or common stock because of the fact that the aggregate amount to which the convertible preferred stock is entitled on a liquidation of your corporation exceeds the aggregate amount at which such convertible preferred stock will be capitalized on your books.

I have examined the laws of Pennsylvania and I am of the opinion that no restriction in surplus is required before dividends may be paid by you on either the convertible preferred stock or the common stock.

I am further of the opinion that a court of equity in Pennsylvania would not enjoin payments of dividends by you from surplus not so restricted.

I also wish to advise you that all of the consideration received by you from the sale of your convertible preferred stock must be credited to capital.

I hereby consent to the use of this opinion by you in connection with the registration statement filed by you with the Securities and Exchange Commission and to the filing hereof as an exhibit thereto.

Very truly yours,

HENRY HIPPLE.

OCTOBER 14, 1937.

KNAPP-MONARCH CO.,

St. Louis, Mo.

DEAR SIR: You have referred to us the deficiency memorandum of the Securities and Exchange Commission, dated October 7, 1937, referring to your registration statement No. 2-3437, particularly the third paragraph on page 4 thereof, wherein the Commission states that the stated capital of the company should be appropriately segregated as between classes of stock and that if the amount of stated capital applicable to preferred shares does not equal the liquidating value of such shares, a footnote should show the restriction on surplus, if any, as a consequence thereof.

Said letter of deficiency also requests that an opinion of counsel be filed disclosing whether or not any such restriction exists. You have explained to us that since the incorporation of the company no segregation has ever been made

as between the two classes of no par stock and you have further advised us that the past history with respect to the issuance of your capital stock makes it impossible to now segregate the stock except in a purely arbitrary way.

Before discussing the question of any restriction on surplus we would like to point out that neither the laws of Missouri nor the charter under which the company operates contain any provision for the segregation of capital as between classes of no par stock. Section 5100 of the revised statutes of Missouri, 1929, provides in part as follows:

"Upon the formation * * * of any stock corporation * * * provision may be made for the issuance of shares of preferred stock of any or all classes, or common stock of any class, or both preferred and common stock without any nominal or par value by stating in the articles of association or certificate of incorporation * * * in lieu of statements which may be prescribed by law as to the amount of capital stock and the number and par value of shares into which it is divided:

"(a) The number of shares with nominal or par value and the number of shares without nominal or par value may be issued by the corporation and the classes, if any, into which such shares are divided;

"(b) The nominal or par value of shares of stock other than shares which it is stated are to have no nominal or par value;

"(c) The amount of capital with which the corporation will begin business."

The third article of your articles of incorporation, as amended, provides as follows:

"Third. The amount of authorized capital stock of this corporation is two hundred thirty thousand (230,000) shares without nominal or par value divided into thirty thousand (30,000) shares of the preferred stock of the corporation, and two hundred thousand (200,000) shares of the common stock of the corporation. The capital with which the corporation will continue business is \$692,784.50, all of which has been fully paid up in lawful money of the United States and is now in the custody and possession of the board of directors of this corporation."

In our opinion the segregation between the two classes of no par stock should be made, or authority for the segregation should be given, if at all, in the articles of association, and you will note from the above quoted provision that no such segregation has been made or authority for the segregation given.

Although no segregation has been made, and it is therefore impossible to determine whether or not the amount of capital segregated to the preferred stock is equal to the liquidating value of such preferred stock, we nevertheless presume that the Commission desires our opinion concerning the existence of restrictions on the surplus of your corporation.

The only restrictions on the payment of dividends under the laws of Missouri are that payment must be made out of net profits or surplus earnings and cannot be made by the corporation if it is insolvent or if the payment would render it insolvent, or would impair its capital. Stated capital is the capital with which the corporation begins business increased by net additions thereto or diminished by net deductions therefrom. In other words capital is the amount a corporation receives for its stock plus such sums as are allocated thereto by proper corporate action. Your articles of incorporation, as amended, contain certain restrictions on the payment of preferred and common dividends, none of which are applicable to the problem under consideration. It is our opinion that subject to any particular limitations contained in your articles of incorporation, as amended, you may at the present time declare dividends on either your preferred or common stock out of net profits or surplus earnings if such dividend does not render your corporation insolvent or would impair your capital below \$722,784.50.

In our opinion it is doubtful whether common stockholders, directors, or officers could validly place such a restriction as is referred to in the Commission's deficiency letter upon the surplus of the company without an amendment to the articles of incorporation. The articles of incorporation provide that the preferred holders shall be entitled to a dividend of \$2.50 per share out of net profits or surplus earnings when declared by the board of directors. An attempt to place such a restriction on the surplus by action of the common stockholders would be an attempted invasion of the exclusive province of the board of directors in its power to declare dividends, and while the board could declare or not declare preferred dividends as it sees fit, we do not believe it could validly tie its hands by attempting by resolution to put such a restriction on the surplus of the company.

Pursuant to the provisions of section 7 of the Securities Act of 1933, as amended, we hereby consent to the use of our name and opinion dated October 14, 1937, in

connection with the registration statement mentioned in the first paragraph of this opinion.

Very truly yours,

NAGEL, KIRBY, ORRICK & SHEPLEY,
By ARTHUR B. SHEPLEY, Jr.

D. PARTICIPATION IN EARNINGS AND MANAGEMENT OF CORPORATION IN RELATION TO CAPITAL CONTRIBUTION

The registration statements referred to below disclose a grave disproportion between the capital contributions of a given class of holders of securities and the participation of such class in earnings and management.

The registration statement of First State Trust Co. (organized under the laws of the State of Delaware) (RS 2-3202) disclosed a capital structure of 200,000 shares of class A common stock par value \$1, and 10,000 shares of class B common stock no-par-value. The class B common stock was the sole voting stock of the corporation and was purchased by the promoters at the price of 1 cent per share or an aggregate purchase price of \$100. The class A common stock was preferred as to assets in event of dissolution or liquidation of the corporation to the extent of \$3 per share. After such payment to the class A, any remaining assets were distributed two-thirds to the class A common stock and one-third to the class B common stock. The class A common stock was entitled to receive dividends at the rate of 10 cents per annum, prior to any payment of dividends on the class B common. Thereafter, any net earnings available for distribution were divided two-thirds to the class A common stock and one-third to the class B common stock. The class A common stock was offered to the public at \$2.25 per share, or an aggregate of \$450,000. The lack of balance in the participations of the two classes on the basis of relative contributions is apparent. The paid-in surplus resulting from the contribution of the class A in excess of the par value of such stock was deemed to be nonrestricted and available for payment of dividends on either class of stock in accordance with charter provisions.

Cane Industries Corporation (RS 2-1832) proposed to make a public offering of 100,000 unissued class A shares and invest the proceeds in securities of companies engaged in the manufacture, sale and distribution of sugarcane products and byproducts. The authorized capital stock of the company consisted of 100,000 shares of class A \$4 cumulative stock stated value \$100 per share and 100,000 shares of class B stock stated value \$0.02 per share. Cumulative voting for each issue was provided for, however, with the class A stock to elect a majority of the board. Class A stock was to be offered to the public for cash at \$100 per share. The class B stock, all outstanding, was held by Redcrest Corporation, which was controlled by Mrs. Harvey Greenspan. Mr. Harvey Greenspan was director, chief financial and accounting officer, secretary, treasurer, and member of the executive committee. Earnings of the company were employed first in payment of the \$4 dividend on the class A stock. After such payment the class A and class B shared equally in any dividends. Thus the declaration of \$600,000 in dividends would involve the payment of \$500,000 to class A and \$100,000 to class B, or a rate of 5 percent on the \$10,000,000 investment in the class A stock and 5,000 percent on the \$2,000 investment in class B stock.

The capital structure of Robot-Hand Corporation (RS 2-2044) consisted of three classes of authorized stock; 500,000 shares of \$5 par 7 percent cumulative convertible preferred; 1,500,000 shares of \$1 par class A common; 1,500,000 shares of \$0.01 class B common. As of March 13, 1936, there were 30,400 shares of preferred and all of the class B common outstanding, with an aggregate capital liability of \$167,000. Such shares were issued to Mr. Osuch (promoter) in consideration of the transfer of patents and patent applications.

Preferred stock was entitled in liquidation to \$5.50 per share while the remaining assets were distributable pro rata to common stockholders without regard to class. The company proposed to offer to the public 250,000 units consisting of one share of 7 percent cumulative convertible preferred and one share of class A common at \$7.50 per unit. Excluding the 30,400 shares of preferred issued to the promoter, the subscriber to one of the 250,000 units at \$7.50 a unit would be entitled in the event of immediate liquidation to \$5.50 for the share of preferred and \$0.07 for the share of common, and holders of class B would receive \$0.07 a share. The underwriter, Frank J. Osuch & Co., was to receive \$1.50 as commissions on the sale of each unit.

Other registration statements which reveal a disparity between the amount of contributions and the degree of control acquired are:

1. H. R. Holtzman Corporation (RS 2-1919). Fifty thousand shares of \$5 par class A stock have no voting power, the entire voting power resting in 50,000 shares of \$1 par class B stock.

2. Easy Washing Machine Corporation (RS 1-2220). Fifty seven thousand, two hundred and forty shares of no par class A stock (held by the parent) possess voting power, while 461,094 shares of no par class B stock do not. The respective capital liabilities at December 31, 1934 are given as \$570,611.61 and \$1,885,915.50.

3. Horn Signal Manufacturing Corporation (RS 2-1564). The authorized capital structure consists of 100,000 shares of participating preference stock (entitled to elect a minority of the board), 36,000 shares of nonvoting class A stock, and 2,000 shares of class AA stock (entitled to elect a majority of the board), all of which stock is without par value.

4. Bankers Union Life Co. (RS 2-50). Both A and B stock of this company have voting rights, but the 25,000 shares of \$10 par A stock possess only one-fifth vote per share, while the 5,000 shares of no par \$1 stated value B stock possess five votes per share.

5. United Investors Realty Corporation (RS 2-3137). The authorized stock consists of 50,000 shares of no par preferred, 250,000 shares of \$1 par class A common, and 1,000 shares of \$1 par class B common. The voting control is held by the class B stock, title to which is vested under a voting trust agreement in the company's four directors.

E.—OFFICERS AND DIRECTORS

1. COMPENSATION

A corporation may enter into a contract for services of an officer at a stated consideration, or upon a bonus arrangement, generally based upon a percentage of earnings, or it may option shares of stock to the officer on such terms as to assure receipt of additional remuneration. These arrangements may provide for compensation on any two of the three, or on all three bases.

The registration statement of the Liquid Carbonic Corporation (RS 2-3247) illustrates the stated salary contract type. In this case, the contract existing between the corporation and W. K. McIntosh, chairman of the board, provides for the performance of duties assigned him by the directors in consideration of \$25,000 per year, without further participation in any bonus or other profit-sharing plan of the company.

The Packer Corporation (RS 2-2645) by contract dated February 6, 1928, expiring January 21, 1938, employs Harry A. Packer as general manager, in return for 7½ percent of its net profits each year; and Tampax Incorporated (RS 2-2498) employs W. Ellery Mann as general manager for 10 percent of the net earnings. The Tampax contract originally also provided for a drawing account of \$20,000 a year, irrespective of net profits, but was subsequently modified to provide that all drawings be deducted from the annual 10 percent. It appears that Mr. Mann had a somewhat similar contract with Zonite Products Corporation (RB 1-261).

The amended certificate of incorporation of Bethlehem Steel Corporation (Delaware) (RS 2-3346) provides for the establishment of a special incentive compensation fund as an "incentive to increased efficient and profitable management."

"There shall be paid into said fund for each fiscal year of the corporation an amount equal to 5 percent of the consolidated net income of the corporation and its subsidiary companies for each such year, after deducting all fixed charges and depreciation (including obsolescence) and depletion, and the amount, if any, to be paid into said fund for each year, and after deducting an amount equal to the dividends accrued for such year upon the preferred stock or preferred stocks of the corporation and of its subsidiary companies.

The persons who shall be eligible to receive special compensation out of said fund shall be (1) the executive officers of the corporation, (2) the heads of departments having general control of matters affecting the corporation and its subsidiary companies as a whole, and (3) the other persons, if any, who shall be directors of the corporation and in its employ or in the employ of one or more of its subsidiary companies.

"Whenever any cash dividend shall be paid upon the common stock, then to the extent that the amounts that shall theretofore have been paid into said fund out of earnings after December 31, 1935, and that the aggregate amount which shall then remain in said fund shall be sufficient therefor, there shall be paid to the executives of the corporation an amount equal to one-fifteenth of the aggregate amount of said cash dividend."

Bonus arrangements based on percentages of earnings, where the basic salary apparently is not contracted for, are also presented by numerous companies. Such arrangements are found in the registration statements of Philip Morris & Co. Ltd., Inc. (RS 2-2317), Alaska-Juneau Gold Mining Co. (RS 1-492), Brown-Forman Distillery Co. (RS 1-123), General Time Instruments Corporation (RS 2-2019), Chicago Mail Order Co. (RS 1-412); Collins & Altman Corporation (RS 1-205), Continental Motors Corporation (RS 1-619), Fittington Schill Co., Inc. (RS 1-454). In the last-named company, Philip Fouke (president), Donald Gibbins, and S. J. Pingree (vice-president) receive 25, 17, and 17 percent, respectively, of annual net profits of Fouke Furniture Co. after deducting 50 percent of net profits taken by another subsidiary. Provision is further made that 50 percent of any losses sustained are to be borne by these three officers out of subsequent payments.

Contracts with officers whereby they were or are entitled to subscribed for shares of stock are common. These contracts are disclosed in the registration statements of Republic Steel Corporation (RS 2-1858), Hawaiian Pineapple Co., Ltd. (RS 2-3402), Skelly Oil Co. (RS 2-1802), The Black & Decker Manufacturing Co. (RS 2-2157), Bridgeport Brass Co. (RS 2-2155), Pittsburgh Steel Co. (RS 2-2044), the Dayton Rubber Manufacturing Co. (RS 2-2359), Bell Aircraft Corporation (RS 2-2342), R. H. Macy & Co., Inc. (RS 2-3305), Dominion Stores, Ltd. (RS 1-450), Globe Steel Tubes Co. (RS 2-3221).

The contract, however, more frequently takes the form providing for a stated salary and a percentage of the net income, or for a stated salary and options designated amounts of stock. Illustrative of the former type is the agreement between Allied Stores Corporation and B. Earl Puckett providing for a salary of \$30,000 and additional compensation of 2 percent of the consolidated net profits up to the amount of profits equal to dividend requirements on the preferred stock and 3 percent of net profit above such requirements. Allied Stores Corporation (RS 2-2302) agreement of February 1, 1930, extending for 2 years.

In the registration statement of F. L. Jacobs Co. (RS 2-1650), the company agrees to pay Clare S. Jacobs and Rex C. Jacobs each \$20,000 a year and 5 percent of the net profits.

Similarly Electric Household Utilities Corporation employs Edward N. Hurley, Jr. (president and director) as general manager, at \$30,000 a year plus a share of annual net profits in excess of — percent of the average capital and surplus accounts. Electric Household Utilities Corporation (RS 1-1695) agreement of October 30, 1933, for 5 years commencing January 1, 1933. The percentage is graduated: 4 percent to \$250,000, 5 percent thence to \$1,000,000, and 8 percent of the excess over \$1,000,000.

Salary and bonus arrangements are also revealed in United Aircraft Corporation (RS 2-1939), Compressed Industrial Gases, Inc. (RS 2-2433).

The Pacific Tin Corporation (RS 1-231) was party to contract with Oscar B. Perry as consulting engineer, providing for a salary of \$25,000 and the right to purchase:

Two percent participation in any metal properties acquired by the company by direct purchase of property or the purchase of 50 percent of the stock of the company owning the property;

Two percent further participation if the properties were examined by Perry within 1 year of the date of acquisition or making of option to acquire;

Two percent participation in any underwriting by the company of metal mining propositions.

Such contract was unassignable, inoperative if Perry were sick, relieved Perry from going to countries dangerous to health, and freed him from the obligation of remaining in Alaska, Yukon Territory, or South America, longer than 6 consecutive months.

American Smelting & Refining Co. (RS 2-2815) has a similar contract with H. A. Guess, vice president.

The Electric Auto-Lite Co. (RS 2-7971) entered into contracts under date of August 21, 1934, with C. O. Miniger (chairman), R. G. Martin (president), and D. H. Kelly (vice president), providing for their employment respectively as supervisory manager, manager, and assistant manager, at salaries of \$60,000, \$40,000, and \$40,000, and granting to each options expiring July 1, 1937, to 6,000 shares of common stock at \$25 per share. Such options were exercised.

Likewise Industrial Rayon Corporation (RS 1-436) employed Hiram S. Rivitz (president) and Hayden B. Kline (vice president) at salaries of \$75,000 and \$24,000 with options to purchase 75,000 and 9,000 shares of stock at \$30 per share for 3 years ending April 30, 1937, to perform such services as designated by the

board or executive committee or the bylaws in connection with any office held during the life of the contract.

The type of arrangement covering salary, bonus, and options may be noted by the contract between Remington Rand, Inc. (RS 2-1889) and James H. Rand, Jr., calling for his services at a salary of \$85,000 a year plus 2½ percent of net profits above \$2,000,000 a year (before deducting Federal income taxes) plus \$20,000 a year for extraordinary expenses above ordinary travel expenses. In addition he was granted warrants calling for 100,000 shares of common stock at \$10 a share. In 1936, Mr. Rand was granted additional warrants exercisable for 100,000 shares of common stock at the same price. Remington Rand, Inc. (RS-2-2480). Salary, bonus, and option arrangements are also presented in registration statements of Bridgeport Brass Co. (RS 2-2964), Sidney Blumenthal & Co., Inc. (RS 1-1240), Varnishes & Paints, Inc. (Truseon Laboratories) (RS 2-1004).

The registration statement and prospectus of Lowe's, Inc. (RS 2-1892) set forth a rather detailed summary of what is stated may be regarded as material management or general supervisory contracts made with certain officers and directors of the company. An original contract entered into in 1924 and subsequently modified from time to time provided for the employment of Louis B. Mayer, Irving Thalberg and J. Robert Rubin individually and as copartners to supervise, manage and generally control the manufacture of all pictures produced by Metro-Goldwyn Pictures Corporation.

Compensation payable under the contract is (1) weekly salaries of \$2,500, \$4,000, and \$1,000, respectively, and (2) a percentage payable to the partnership of 20 percent of the first \$2,500,000 combined net profits and 15 percent of any excess remaining after deduction of an amount equal to dividends on preferred stock of the company and its subsidiaries and \$2 per share on outstanding common stock of the company. In addition the three persons in 1932 were granted nonassignable options to purchase 50,000, 100,000, and 50,000 shares of common stock, respectively, exercisable as to 27.78 percent of each option at \$30 per share between December 31, 1934, and March 1, 1935, as to 27.78 percent at \$35 per share between December 31, 1935, and March 1, 1937, and 44.44 percent at \$40 per share between December 31, 1937, and March 1, 1939. Shares not purchased during either of the first two periods specified may be purchased up to the end of the second period at \$35 per share, and thereafter at \$40 per share prior to March 1, 1939.

Similar arrangements exist for the employment of David Bernstein, vice president, to supervise the finances of the company at a weekly salary of \$2,000, certain allowance for expenses, and 1½ percent of the combined annual profits, and granting an option upon 50,000 shares exercisable upon the same terms indicated above. Since 1926 the board of directors from year to year has authorized payment to Nicholas M. Schenck, president, a percentage compensation based on 2½ percent of the combined annual profits in addition to a weekly salary and a certain allowance for expenses other than traveling expenses (Loew's Incorporated (RS 2-1892), as amended). Since 1932, Mayer, Thalberg, and Rubin voluntarily accepted a reduction in weekly salaries to \$3,250, \$3,250, and \$1,000, respectively. For the fiscal year ended August 31, 1935, the sum of \$1,013,058 was paid the partnership as the percentage compensation referred to, while total remuneration received by Bernstein was \$182,711.88 and by Schenck was \$265,176.80.

II. INTEREST IN CONTRACTS

The persons constituting the management generally are not precluded from entering into contracts on behalf of the corporation with themselves or with corporations in which they are also interested. Articles of incorporation frequently have a provision covering this point, usually requiring that the interest of a director in the transaction be disclosed to other directors, though not necessarily prohibiting the interested director from voting. For example, the following in the articles of incorporation, November 29, 1932 (Delaware) of Dejay Stores, Inc. (RS 2-2302):

"Thirteenth: In the absence of fraud, no contract or other transaction between the corporation and any other corporation or any individual or firm shall be in any way affected or invalidated by the fact that any of the directors of the corporation is interested in such other corporation or firm or personally interested in such contract or transaction; provided that such interest shall be fully disclosed or otherwise known to the board of directors at the meeting of said board at which such contract or transaction is authorized or confirmed; and provided, further, that at such meeting there is present a quorum of directors not so interested and that such

contract or transaction shall be approved by a majority of such quorum. Any director of the corporation may vote upon any contract or other transaction between this corporation and any subsidiary or affiliated corporation without regard to the fact that he is also a director of such subsidiary or affiliated corporation."

Likewise the interested director of Addressograph-Multigraph Corporation (RS 1-083) is barred from voting. On the other hand, he is not by R. H. Macy & Co., Inc. (RS 2-3305), Koppers Gas & Coke Co. (RS 1-555), The Diamond Match Co. (RS 1-378).

The proposed prospectus of Tampax, Inc., was amended to include reference to the provisions of its articles of incorporation concerning transactions by its directors who might have an interest adverse to that of Tampax, Inc.:

"The corporation may enter into contracts or transact business with one or more of its directors, or with any firm in which one or more of its directors are partners, or with any corporation or association in which any one of its directors is a stockholder, director, or officer, and such contract or transaction shall not be invalidated or in anywise affected by the fact that such director or directors have or may have interests therein which are or might be adverse to the interests of this corporation, even though the vote of the director or directors having such adverse interest shall have been necessary to obligate this corporation upon such contract or transaction; and no director or directors having such adverse interest shall be liable to this corporation or to any stockholders or creditor thereof, or to any other person, for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such director or directors be accountable for any gains or profits realized thereon; always provided, however, that such contract or transaction shall at the time at which it was entered into have been a reasonable one to have been entered into and shall have been upon terms that at that time were fair."—Tampax, Inc. (RS 2-2408), article tenth, paragraph 4, articles of incorporation.

F. ANNUAL MEETINGS

The place selected for the annual meeting, the required notice of such meeting and the provisions for constitution of a quorum apparently are frequently determined by a desire on the part of the management to abridge the exercise of whatever participation in management the security holders may, in terms, have under the charter.

Thus, some question may be raised as to the possible degree of participation in management policies by the stockholders of Bankers Income Shares, Ltd. (RS 2-2000), where the charter provides that at annual meetings action may be taken by show of hands of stockholders present, of whom two constitute a quorum, and notice of the annual meeting, which may be held any place, need be given only to residents of Newfoundland and by posting 24 hours prior to the date of meeting in the office of the company in Newfoundland.

G. REPORTS TO STOCK HOLDERS

A number of registration statements on file with the Commission contain reports to stockholders. An illustration of a not uncommon type of report made to stockholders is afforded by the registration statement of Bagdad Copper Corporation (file No. 2-2000). As required by the form upon which the statement was filed, copies of a series of reports made to stockholders at intervals over a 6-year period were furnished as exhibits. By an amendment to its registration statement dated December 29, 1937, the registrant disclosed the following facts with respect to the contents of these reports to stockholders. The quotations are from the amendment:

"In connection with the annual reports of the registrant as of February 10, 1930; January 5, 1931; October 1, 1932; July 1, 1933; March 5, 1934; February 2, 1935; March 11, 1935; and February 29, 1936, which are included in exhibit B to the registration statement proper, it should be noted that:

"(1) In the report of February 10, 1930, the result of a diamond drill hole was described and the statement made that 'it proves the existence of commercial ore' for a certain depth below the then present deepest workings at that particular point. The quotation is from a report by the then general manager of the company and registrant believes it would have been more accurate and informative to say that the average copper content of said hole was 0.62 percent copper.

"(3) (a) In the report of October 1, 1932, registrant stated that 'the ore-bearing monzonite covers about 1,000 acres of which some 500 acres are considered to be very probable productive, as indicated by scout drill holes and scattered development work,' and further stated that 'it is estimated that within this particular block of ground are developed some 48,000,000 tons of sulphidic copper ore (disseminated uniformly throughout the area), containing more than 1,000,000,000 pounds of recoverable copper metal'.

"Attention is called to the fact that this estimated statement as to 500 acres being very probably productive does not concur with the Hutchinson report, which estimates 1,000 acres of monzonite, of which 400 acres can be considered favorable and 170 acres of the 400 probably productive.

"Hutchinson in his said report, estimated that in 1926 there were contained in the Bagdad area 20,935,530 tons of proven ore. After additional development by registrant in 1928, 1929, and 1930 under the supervision of George G. Thomas, its then general manager, he reported on January 5, 1931, to registrant that the tonnage had been doubled to 48,000,000 tons by the increase in the average thickness of the ore body from 105 feet to 240 feet and slightly lowering the average grade. Registrant has no detailed data to support this estimate.

"The words 'disseminated uniformly throughout the area' were intended as a relative term; the idea being to distinguish the Bagdad ore occurrence, viz., small particles of the copper mineral occurring as specks within the general rock mass as distinguished from ore, as it occurs in fissure veins or lenses replaced in limestone, etc.

"(b) In the same report registrant referred to its research in connection with the Wetherbee process for converting copper concentrates into electrolitic copper and, to illustrate its possibilities, gave the market price of copper at the time of shipment to the smelter and the net price to registrant from the smelter and then said, 'Whereas, on sales of electrolitic copper made direct to the consumer, the company received the full market price for the copper, less 6 mills per pound for freight,' Registrant did not intend in these statements to say that it was about to use this process in a commercial way or that the difference between market price of copper and smelter returns would all be profit to the user of the process or that there would, at that time, have been any profit in the use of such process, although the experiments made by registrant did at that time indicate a saving in the use of such process.

* * * * *

"(4) (b) Under the heading 'Current Assets' in the balance sheet included in said report of July 1, 1933, there is included 'Other securities, \$101,340.65.' This item represents an investment of \$100,000 in stock of Bagdad Copper Products, Inc., and an investment of \$1,340.65 in patent (\$1 thereof representing value of process and the balance representing patent expenditures). These items are not current assets and should not have been included under the heading 'Current Assets' in said balance sheet."

An excerpt from a prospectus on file with the Commission discloses the accuracy and sufficiency of the information furnished preferred stockholders to enable them to form a judgment as to the merit of a given course of action on their part. The following is a quotation from the prospectus:

"The offer of (name omitted) dated April 1, 1935, exhibit I-2, filed with the registration statement contains the following omissions and misstatements of fact:

"(a) In paragraph 3 thereof reading as follows:

"Whereas the holders of preferred participations of your company do not have a ready market for their shares because of the fact that they are paid a fixed dividend;

"The statement that the preferred stockholders 'are paid a fixed dividend' is not complete because it should have been stated that the preferred-stock holders were entitled to a noncumulative dividend of 12 percent per annum plus the right to participate as a class to the extent of 50 percent of any additional dividends declared and paid in any one year.

"(b) In the last paragraph thereof reading as follows:

"You will note that such action on the part of the present holders of the common participations will be a financial detriment as far as dividends and income are concerned, because, while under the present arrangement they are receiving fifty (50) percent of the earned profits as dividends on their participations, they will be in a less favorable position as far as receiving such dividends, in the event this proposal is accepted. In spite of this situation but in order to promote the

best interests of the holders of the preferred participations, and in order to enable the company to progress by the acquisition of additional properties, we are making the foregoing offer to the company, to be accepted upon the terms set forth herein."

"The foregoing is an inaccurate statement of fact:

"(i) Because there was no financial detriment suffered by the common-stock holders since no cash dividends had been declared or paid to them;

"(ii) Because upon acceptance of the offer and the reclassification of the stock the common stockholders were entitled to any cash dividend over the requirement of payment of dividends to any preferred shares still outstanding and not converted and

"(iii) Further because the concluding portion of such paragraph commencing 'In spite of * * * ' while purporting to be factual is not factual but argumentative.

"The references in exhibits I-1, I-4, and I-5 filed with the registration statement to the valuation of \$250,000 as representing the consideration for the rights surrendered by the then common stockholders omit to state that such valuation was imposed upon the company by the then dominant common stockholder (name omitted), and was fixed by the board of directors arbitrarily and without reference to any consideration other than (name omitted) proposal—exhibit I-2."

Senator O'MAHONEY. You were also asked to furnish material with respect to the disparity in the voting power of stock of the type to which you referred yesterday, where one corporation had 200,000 shares of stock, 100,000 of which were sold for one cent a share and the other 100,000, without voting power, were sold for a much larger sum?

Mr. O'BRIEN. \$250,000 to the public. We are now compiling statistics of that sort from our public records and further memoranda will be delivered to the committee covering that point.

Senator O'MAHONEY. Thank you. When you have it ready, we will put it in the record.

The committee will stand in recess until tomorrow morning at 10:30 o'clock.

(Whereupon, at 12:15 p. m., a recess was taken until the following day, Friday, March 4, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

FRIDAY, MARCH 4, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C., March 4, 1938.

The committee met, pursuant to recess, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney presiding.
Present: Senators O'Mahoney (chairman), King, Borah, and Austin.

STATEMENT OF BENJAMIN C. MARSH, EXECUTIVE SECRETARY OF THE PEOPLES' LOBBY, WASHINGTON, D. C.

Senator O'MAHONEY. Mr. Marsh, you may proceed, if you are ready.

Mr. MARSH. My name is Benjamin C. Marsh. I appear here as executive secretary of the People's Lobby, with headquarters in Washington, in the Burchell Building.

Senator O'MAHONEY. You have appeared before this committee at other times, I presume?

Mr. MARSH. Mr. Chairman, it is 20 years ago this week that I came to Washington.

Senator BORAH. And you have been running things ever since?

Mr. MARSH. I am beginning to have more and more respect for facts instead of theories than I think some of the members of the Senate and House of Representatives have, because you can work theories until election comes. Then you get down to facts, and you cannot, by referendum vote or judicial ukase, change economic laws. I have been in most of the big dictatorships, except Japan, and I do not want to go there. I would like first to read a brief statement, if I may, and then go into some detail and make some suggestions.

I will say first that the principle of this bill was very carefully discussed by the board of the People's Lobby, which includes Bishop Francis J. McConnell, president, Dr. John H. Gray, former president of the National Economic Association, Dr. Harry W. Laidler, former director of the Bureau of Economic Research, and others; and they approved the principle.

I think in 1918, when I was with the Farmers' National Council, of which Senator Borah will no doubt recall the late George P. Hampton, was director, Mr. Steele of Pennsylvania introduced a bill incorporating the same principle of regulation of corporations.

To fulfill the declared purposes of this bill it must be amended to cover all corporations, as it was when it was originally introduced. With that, it is valuable chiefly as a means to prove the necessity for repealing those laws which have made large corporations a menace,

and to enact legislation which will retain the efficiencies of large-scale control and production and make them inure largely to the benefit of producers and consumers, which, of course, is the purpose of this bill.

The proposed bill applies only to corporations having gross assets of over \$100,000. In 1934, over two-thirds of all corporations—280,913 out of 410,626—had total assets under \$100,000.

I do not want to criticize previous witnesses, but I will call attention to the inaccuracy of the statement of Mr. Cunningham, if I understood him correctly—and if not, the minutes will correct my misunderstanding—that this bill applies only to corporations having over \$100,000 gross assets and would permit the Federal Trade Commission, or whatever agency is created, to supervise the accounts of 300,000 corporations. There was some discussion over whether it would apply to gross or net assets. I want to call your attention to some figures in the report on corporation incomes for 1934.

Senator AUSTIN. Who is that by?

Mr. MARSH. That is the report of the Commissioner of Internal Revenue for 1934, just out within the last few days. I have not read it completely, but have tried to go over it as carefully as I had the time. It divides all corporations into total asset classes.

Senator AUSTIN. What page?

Mr. MARSH. Page 72, table 5.

This report shows that this bill applies only to about 130,000 corporations at most. I will say very frankly that, if it is necessary just to try this out, I would have it even apply only to corporations with assets of over \$50,000,000. I will give you some striking figures relative to these big corporations, which will indicate why as Senator Borah pointed out yesterday in certain lines a few large corporations were able to dominate the situation. This is the basis of our figures as to how many corporations would be covered by this bill.

Senator BORAH. How many did you say would be covered by the bill?

Mr. MARSH. About 130,000. Out of 410,626 corporations, 280,913 have total assets under \$100,000. Of course, that is for 1934. There may have been some change since then.

I would like to read some of the figures given by Mr. Robert H. Jackson recently in an address published in the New York Times, showing what has happened to some of these big corporations, I think approximately 22 of them being listed, giving the profits and deficits in 1932 and 1936, I might say, before and after New Deal treatment.

The United States Steel Corporation in 1932 had a deficit of something like \$71,000,000. Then in 1936 it had a profit of \$50,583,000. I saw the figures for last year, 1937, and they amounted to almost exactly \$100,000,000.

Senator AUSTIN. Where did you get those figures you are giving us?

Mr. MARSH. I saw them in the New York Times, taken from the report of the United States Steel Corporation.

Senator AUSTIN. Did you check up on the figures in that list you are now referring to?

Mr. MARSH. No. It was in the New York Times.

Senator AUSTIN. That list was first used by Senator Robinson on the floor of the Senate, and afterward used by Mr. Jackson in the address you speak of. Did you take the same corporations in that list, about 20 of them, and see what profit they earned last year, 1937?

Mr. MARSH. No; I did not. Some of them, I imagine, earned less in 1937 than in 1936. That is the year for the figures I am presenting, and I think they are probably correct. I think Mr. Jackson may be more accurate in his figures than in his theories. I am not sure. One is easier to get at than the other.

These smaller corporations, with total assets of \$100,000 or less, had only about one-fourth of the total assets, but close to one-sixth of the total gross sales, and one-seventh of the total compiled receipts. I am again summarizing the Government's figures. The cost of goods sold by these smaller corporations, including wages, was almost one-sixth of the total, and as many of them were too poor to install expensive machinery, they were, of course, large employers of labor, in the aggregate.

The information required and conditions prescribed as a basis for a Federal license are admirable. Before I finish I would like to suggest some additions for your consideration.

After watching legislative procedure in Washington for 20 years, and 11 years before that in Albany, I recognize you really do not achieve perfection, except in political platforms, without a long effort. I think this is one of the most vital bills, after studying legislative procedure pretty carefully, that has ever been before Congress. Whether you are going to have socialization of industry, or whether you are going to make the present system evolve a social service, it is of vital importance that you do not try to pay returns on a fictitious capital or false value. If you are going to have public ownership, it is important that you do not pay champagne prices, as Uncle Sam is inclined to do, under any administration, for watered stock.

This bill is of the utmost importance, because we have got to decide whether we are going to continue to encourage private initiative, or whether we are going to have some kind of regulated monopoly, or whether we are going to have public ownership. I am not sure which we are going to have. I am sure we are not going to continue the way we have been going.

The bill should be passed, in my judgment, though, if limited to corporations with gross assets over \$100,000, it should be supplemented by Federal wages and hours legislation I was most keenly interested in the dinner last night on the twenty-fifth anniversary of the Department of Labor to hear a former president of the Chamber of Commerce, Mr. Henry Harriman, say he hoped child labor was a thing of the past.

Because the bill is an essential preliminary to end the conditions leading to private monopoly, it is important to record that it cannot end, but merely curb, such monopoly. To end the dangers of private concentration, high tariffs, monopoly of natural resources, private credit, and patent excesses must be ended.

Senator AUSTIN. Will you permit an interruption at this point?

Mr. MARSH. Yes.

Senator AUSTIN. I am wondering about the use of the term "private credit." What do you mean when you speak of eliminating private credit?

Mr. MARSH. I put a dollar in the savings bank, and that bank can theoretically issue credit up to nine times that dollar, and charge interest on it. It may not be exactly nine times, but it is several times. I think that is wrong. I think we have got to have socialized

banking and credit. I think the President made a great mistake in not doing that when he came in. I think that is one of the basic things he should deal with.

Private monopoly is indefensible, but many undertakings must be monopolistic to be efficient, and these must be publicly owned. I say again that whether you believe you are going to have public ownership or private ownership, this bill is of vital importance, because it will affect whatever the future of industry is going to be.

I have compiled from the report of incomes for 1929, 1932, and 1934, comparative figures of the various classes of corporations. I do not want to take the time to read all of it, but I would like to have it incorporated in the record.

Senator O'MAHONEY. We will be very glad to have that in the record.

(The document referred to is here set forth in full, as follows:)

Comparative statement of corporations submitting balance sheets to Bureau of Internal Revenue for 1929, 1932, and 1934

[Amounts in thousands]

	1929	1932	1934
Number.....	398,815	392,021	410,626
Assets.....	\$335,777,910	\$280,082,923	\$301,308,577
Cash.....	18,988,170	15,917,202	19,960,857
Tax-exempt investments.....	8,195,241	11,916,864	19,083,771
Real estate and equipment.....	91,711,742	108,553,151	102,751,495
Bonded debt and mortgages.....	35,225,921	47,310,414	48,604,281
Capital stock.....	109,957,923	97,488,992	104,946,105
Surplus and undivided profits, less deficit.....	55,111,294	45,663,746	36,639,126
Cash dividends paid.....	8,355,662	3,853,943	4,817,531
Stock dividends paid.....	1,288,643	142,422	212,117
Total income tax.....	1,193,435	282,059	585,940
Compiled net profit (less tax).....	10,676,071	3,792,798	2,456,080

CORPORATIONS HAVING TOTAL ASSETS OVER \$50,000,000

	1932	1934
Number.....	618	761
Assets.....	\$149,240,618	\$183,167,932
Cash.....	8,447,610	9,222,199
Tax-exempt investments.....	6,328,966	11,511,250
Real estate and equipment.....	58,613,888	48,742,668
Bonded debt and mortgages.....	28,459,222	27,033,215
Capital stock.....	43,439,994	46,700,924
Surplus and undivided profits, less deficit.....	22,616,039	20,694,489
Cash dividends paid.....	2,290,998	1,189,700
Stock dividends paid.....	70,881	46,764
Total income tax.....	131,770	183,039
Compiled net profit, less tax.....	199,828	1,897,992

Mr. MARSH. As will be noted from this statement that is in the record, the number of corporations reporting in 1929 was 398,815. The total assets of those corporations, in round figures, in 1929, was \$335,777,000. About 1933 or early 1934 I was talking to the late Senator Couzens, and I said: "Are you doing anything to meet the situation?" He was an experienced businessman, and I was not. I made money running a boarding club at \$2 a week, in college, and that might indicate I had some business capacity, but not any large amount of business experience.

Senator O'MAHONEY. You might have become a monopolist if you had kept on.

Mr. MARSH. I would not have had a chance, because we still had a lot of free land and we had not developed mechanization. When the good free land is all gone and mechanization has reached the stage that it has in this country, you have an entirely different situation. Of course, chances were a little better, but the other fellow had a chance to get something for nothing, too.

Senator Couzens pointed out, and I am quoting him from memory:

I think every major corporation in America ought to be put through the wringer. Many of them are overcapitalized. They get along some way or another, but we will not solve our problem until we get them down to a fair capitalization.

What happened? President Hoover adopted the policy of *laissez faire*, which I think means to let nature take its course and let the gamblers take the burden. What was the result? In the 3 years from 1929 to 1932 the total assets of corporations dropped from \$335,000,000,000 to \$280,000,000,000, a reduction of approximately \$55,000,000,000.

Senator BORAH. Between what years?

Mr. MARSH. Between 1929 and 1932. Then we started in with the policy of the N. R. A.

Senator AUSTIN. May I interrupt you for a moment?

Mr. MARSH. It is not an interruption.

Senator AUSTIN. I want to ask you if you know whether or not, in that period to which you call attention, from 1929 to 1932, there was a tremendous contrast in the amount of capital that was poured into business in the way of financing new enterprises and refinancing old enterprises? For example, in 1929 you had that coincidence of the investment of more than 6 billions of dollars in new enterprises, whereas in 1932 you had in this country only 325 million. Between the 2 years there was a sharp decline. Are you aware of that situation that prevailed in that period you are now discussing?

Mr. MARSH. Yes; I know there was a drop there of something like 6 or 7 billions, partly because exorbitant prices were paid for what should have been acquired at a much more reasonable figure.

I do not have the latest official figures. In 1934 there were 410,626 corporations reporting. Their total assets were roughly, in round figures, 301 billion dollars, an increase, roughly, of 21 billions since 1932. If these figures which I quoted from Mr. Jackson's speech are correct, then the high profits made in 1936 would indicate that we will probably have the capitalization of corporations about back to the 1929 level of 335 billions, or somewhere around there.

I heard Mr. Cunningham yesterday, and I think I have read practically all the testimony before the committee on the original bill, and I have heard some of the witnesses here. What you propose to do is to require that, under a system in which the majority of the people are willing to work and want to work but cannot, is to limit bases for property return to a fair figure and to bring about a different situation to enable those people to work.

I got some figures from one of the financial papers the other day that were taken from the Federal Reserve Board index, showing a drop from 117 to 81 in production within about 6 months, or about one-third. The present index is about 81, and the prospects are that although there may be a slight improvement during March and April, there will not be any material improvement until late this year.

During 1937 financial institutions increased their holdings of arm lands by about 2,000,000 acres, compared with 1,500,000 acres taken over in the 2 years 1935 and 1936, and at the end of 1937 their total holdings were over 28,000,000 acres. The value of these holdings was about 989,000,000 compared with 906,000,000 in 1936 and about 150,000,000 in 1929.

Senator O'MAHONEY. What is the source of those figures?

Mr. MARSH. The Federal Reserve Board index of industrial production for the first figure and the second was the Farm Credit Administration.

Senator KING. Does that include the real estate which was foreclosed and acquired?

Mr. MARSH. That includes most financial institutions.

Senator KING. Would that include homes?

Mr. MARSH. Yes; on farms.

Senator KING. It was not farm loans, was it?

Mr. MARSH. It was farm homes, but not city homes.

Senator O'MAHONEY. Then that would exclude the Home Owners' loans?

Mr. MARSH. Yes. Today the Federal Government owns 40 percent of the farm-mortgage indebtedness, or, roughly, two-fifths.

Senator BORAH. What was that statement you just made?

Mr. MARSH. The Farm Credit Administration now holds, roughly, 40 percent of all mortgages on farms, including what were foreclosed and what are outstanding.

I want to compare and put in the record the figures of the totals for 1932 and 1934, of the corporations with over \$50,000,000 assets, because, as I intimated earlier, if you find it necessary in order to get this bill through to restrict it to corporations of over \$50,000,000, I still think the bill should pass, although I hope you will not change it.

Senator KING. Before you proceed further may I ask you a question?

Mr. MARSH. Yes.

Senator KING. My recollection is that a number of years ago the high-water mark of value in the industrial life of all property, back in 1929, 1928, or 1926, the aggregate value of all property in the United States was about \$270,000,000,000. Do your figures change that, or modify that? That was the high-water mark. A large part of that consisted of stocks and bonds which subsequently were greatly reduced in value. I am prompted to ask the question in view of the fact that your testimony would indicate a larger value of property, real, personal, or mixed, than the figure I have just indicated.

Mr. MARSH. These figures include all assets and other investments, total assets, cash, tax-exempt investments, real-estate investments. I have omitted inventories, but with all the assets included I think there is no conflict.

Senator KING. I understood your statement to be that the value of all corporations was over \$300,000,000,000, and that is greatly at variance with any figures I have ever heard. I understood the value of all property in the United States at the high-water mark was about \$270,000,000,000.

Mr. MARSH. I did not make myself clear. The total assets for 1934 were \$19,960,000,000. Notes and accounts receivable were \$40,525,000,000. Inventories amounted to \$14,311,000,000. Invest-

ments and tax-exempt investments were \$19,083,000,000. All those included in the aggregate amount to around \$301,000,000,000.

Senator KING. However, a good deal of that was stocks and bonds. Would you call that property?

Mr. MARSH. No.

Senator KING. They rest upon the credit of the Government. They rest upon real estate. They are not real property.

Mr. MARSH. Yes. I would not call them property. They are evidences of indebtedness which are a charge upon wealth and production. I think your point is well taken, Senator King. I used the figures I got from the Government.

Senator KING. You are just giving the paper assets, and not the real value of the property.

Mr. MARSH. I did not give the real value, perhaps. I gave you what the Government called the value of corporate assets in 1934.

I call your attention to the fact that 761 corporations, with over \$50,000,000 assets, had capital assets of nearly \$48,000,000,000. That was represented by 761 corporations out of something over 410,000. It is very significant to me. Maybe you will not agree with me, but it is very significant to me the way these large corporations are criticizing the Government, but are playing safe by buying tax-exempt Government bonds from Uncle Sam. Of course, Uncle Sam is the devil dehorned to them, but they are mighty grateful to have somebody supply them with nontaxable income.

Senator AUSTIN. Do you not think that has resulted from another thing, and that is the concentration of investments?

Mr. MARSH. It may be so. When I heard Mr. Cunningham and other businessmen criticize the Government for doing anything, my answer was: "You fellows thought you knew how to do it. You practically ran the country for 50 years. Why in heck don't you do it now?" Since they got us into the mess we are now, and they now criticize and object to everything, saying it is wrong, I say it is rather unjust.

I would like to read a letter from the comptroller of the United States Steel Corporation, which I hope you will put in the record. I could not decipher his signature. I suppose they wanted it so you could not identify the name. It is on the letterhead of the United States Steel Corporation. I asked for the figures of the corporation and he wrote to me on February 25 as follows:

Responding to your letter of the 23d instant, would advise that the investment figures which you request are not available.

You are probably aware of the fact that the corporation itself owns no iron ore or coal properties.

I know they listed them with the Bureau of Corporations for something like \$700,000,000, and the Government's valuation was \$100,000,000, but the \$700,000,000 stood. That is a remarkable statement.

It has investments in capital stocks of iron ore and coal subsidiaries.

That is in line with the point made yesterday about subsidiary corporations.

The corporation's investment is represented by mixed physical property and a separation into component parts would be purely arbitrary.

The annual report of the corporation for the year 1937 is in process of compilation. A copy of same will be forwarded to you as soon as it is ready for distribution.

I would suggest that you invite the comptroller of the United States Steel Corporation to appear before your committee, and ask him about those things. If the United States Steel Corporation owns all these subsidiaries, you might get some interesting information from him.

I would like to suggest some amendments to the bill. The first is on page 7, as to information to be acquired. I have discussed these things with several economists in various Government departments. I will not go into much detail, but I suggest them for your consideration. They are as follows:

First, the extent to which capitalization has been increased as a result of mergers; second, on what basis the capital assets are appraised, and particularly natural resources owned, and rights-of-way in city and country; third, the nature and current value of investments not tax exempt; fourth, the nature of notes and accounts payable.

Senator AUSTIN. What do you mean by "the nature of notes and accounts payable"?

Mr. MARSH. Just what they are. They listed in 1934 notes and accounts payable of slightly over \$27,000,000,000. I do not know what that represents. That is a very large proposition. It reflects what deductions these corporations can make. I think it is a good thing to know their nature. I would like to know what they mean by it. I do not know. Perhaps I am too inquisitive, but I think conditions justify that.

Senator AUSTIN. Do you mean that you would like to ascertain what proportion of those accounts and notes are customer notes, and what proportion, if any, are nonbusiness transactions?

Mr. MARSH. Yes; and to what extent they are going into the stock market or other methods of carrying on their business.

Senator AUSTIN. That would not be involved, because that deals with other transactions. These are notes and accounts payable to corporations.

Mr. MARSH. That is what I would like to find out; how they use them, and why?

Senator KING. Mr. Marsh, if it will not interrupt you, I should like to ask you a question. I happen to know something about these corporations, being on the Finance Committee, and the committee has received many of these reports in reference to refunds and claims made. In making their tax return they are compelled to make a complete disclosure under oath of their assets and liabilities. Some of those matters to which you refer would be revealed in the returns which they submit to the Treasury Department.

Mr. MARSH. But, Senator King, if I correctly understand it, those returns are declared under an oath of secrecy to the Treasury Department.

Senator KING. No. It is examined by the committee of the Senate and the House. We have examined many of them.

Mr. MARSH. I understand the purpose is to find out whether they pay taxes. The purpose of this bill is not only to find out whether they pay taxes, but whether their capitalization is justified, as a basis for earnings. It is an entirely different thing, it seems to me, if you want to go into that more fully.

There are one or two other points, to which I would like to call your attention, as follows:

Fifth, the liability not distributed; sixth, the growth and purpose of surpluses and undivided profits; seventh, patents held and how obtained; eighth, labor policies; ninth, customs duties enjoyed.

In 1934 Secretary of State Cordell Hull said:

A large section of our industry is maintaining an artificial price situation, is endeavoring to move forward under the heavy burden of inflated capitalization, excessive overhead charges, wasteful overcapacity, and obsolete units and equipment. Never was improvement in industrial efficiency more needed than now. We cannot hold our place in the world if industry is to rely on doles, subsidies, and other artificial arrangements which bolster and keep alive inefficiency at the expense of the progress and expansion of the vigorous and efficient units in our economy. We must come down from our artificial stilts to solid reality if we are to achieve substantial industrial prosperity and if we are to hold our place in the world market.

If I correctly construe this bill, that is just what it wants to do.

Senator AUSTIN. May I interrupt you again?

Mr. MARSH. Yes.

Senator AUSTIN. You have made a statement as to the effect of the present income-tax law upon the elimination of water from the statements of corporations, in which they return the capital-stock tax. You will recall there is a provision for them to restate the capital structure, and they are allowed a good deal of latitude in restating that value for the purpose of the capital-stock tax. Have you ascertained how much of a deduction is made in these assets statements?

Mr. MARSH. No; I have not. Very few corporations have made reports since that law went into effect. Some have, but not very many.

Senator KING. Nearly all the oil companies and mining companies make such statements. It is important in order to determine the tax. They make them high enough or low enough so they will be advantageous in the matter of tax.

Mr. MARSH. You have the same situation with the railroads. I do not have those figures, Senator Austin.

I would like to make a bit of analysis of some of the corporations that would be affected. Of the gross sales in 1934 of the 410,626 corporations reporting, amounting to \$72,824,942,000, the 761 corporations with assets of \$50,000,000 and over reported \$14,391,582,000, or nearly one-fifth. Of these 761 corporations having in 1934 \$50,000,000 and over capital assets, 1 was agriculture and related industries; 27 were mining and quarrying; 128 were manufacturing; 1 was construction; 229 were transportation and other public utilities; 22 were trade; 6 were service, professional, amusements, hotels; 297 were finance, banking, insurance, real-estate holding companies, stock and bond brokers.

It appears there were all sorts of manufacturing corporations. For instance, referring to Senator Borah's statement yesterday, of the 128 manufacturing corporations having \$50,000,000 of assets, or over, 17 were food and kindred products; 4 were tobacco products; 3 were textiles and their products; 1 was leather and its manufactures; 4 were rubber products; 5 were paper pulp and products; 2 were printing, publishing, and allied industries; 35 were chemicals and allied products; 3 were stone, clay, and glass products; 50 were metal and its products; 3 were forest products; and 1 was not identified.

Senator O'MAHONEY. Would it greatly inconvenience you if we should ask you to suspend now? You are with us always, you know.

Mr. Griffith, of the New York Board of Trade would like to make a statement, and wishes to return to New York.

Mr. MARSH. I will be through within a minute. I have taken more time than I intended. I appreciate the courtesy of the committee.

Senator O'MAHONEY. Very well. You may proceed.

Mr. MARSH. I would like to put in the record a summary of an article by Ernest Davis, issued by the New Fabian Research Bureau, and published in London by Victor Gollanz, Ltd. It is a very timely pamphlet discussion of the price of public ownership, production for use, and so forth.

Senator O'MAHONEY. We will be very glad to have that in the record.

(The document referred to is here set forth in full, as follows:)

Mr. Davis summarizes the position of the British Labor Party, which is to give "fair and reasonable compensation," with the principle "basis of compensation might well be the reasonable net maintainable revenue of the undertaking concerned."

This statement obviously holds a lot of snares—net income of corporations varies 50 to 100 percent.

Mr. Davis stated:

In the main, there are two distinct ways of effecting the transfer from private to public ownership. First, direct government purchase. This method involves the owners being bought out for cash or government bonds. The state becomes responsible for the payment of interest on the loans raised for the purpose and all relationship between the bond or stockholder and the industry ceases. The extent to which the industry would contribute to the revenues of the state out of its profits would be a matter of arrangement between the state and the industry. If this policy were followed such relationship would depend on the general financial policy pursued by the government and upon any general economic plan adopted by it.

The second method is the conversion of the industry into a public corporation interest-bearing stocks of the new corporation being created and distributed to the owners of the industries acquired. In this way the capital created to provide compensation to former owners is an obligation of the industry.

As he points out:

To assure the continued operation of the capitalist system throughout the transition period, during which industry is being gradually socialized, nothing must be done which will stop the continued operation of privately owned industry. Anything done to frighten the capitalist into ceasing production of goods will cause the economic system to collapse. Confiscation of one industry would frighten the capitalist of every other industry, and would bring about such a fall in capital values that economic chaos would result.

He further warns:

Once capital charges have been stabilized at a high level the only improvements that a publicly owned industry can bring to the consumer or the worker will be achieved through increased efficiency and elimination of wasteful competition or overlapping, or through increased consumption. The greatest saving, that to be secured by reduced capital charges, will have been ruled out.

Success or failure of a public enterprise may well turn not on the efficiency and ability of the board, but on the history of the companies it supplanted.

His point is well taken:

The equity holder, therefore, must continue to bear at least part of the risk which was always his or else he must accept a fixed rate of interest far lower than that received by him during periods of prosperity. He must sacrifice both income and capital for the greater security he would receive.

Mr. Davis does not stress the obvious fact that ending private exploitation of land and other natural resources, private credit, patent rights, and tariffs—in short, repealing the legal basis of corporation exactions, would make public ownership easy and compensation a minor matter.

I think it would be a good thing if your committee would call before you or consult the Chief Economist of the Federal Trade Commission, Dr. Francis A. Walker. I think his testimony would be very valuable. He was with the former Bureau of Corporations. He helped make an appraisal of the United States Steel Corporation, and I think he can tell you a good deal about how corporations are capitalized.

Even if you have to restrict this bill to corporations with \$50,000,-000 assets, it is a step in the right direction, and I hope it will be enacted by this Congress. It has been pointed out that dictatorships are now regulating capital much more than most democracies. This is developed in this book Dictators and Democracies, by Dr. Calvin B. Hoover. I hope in America we will use democratic methods. If we do not change the present methods, of industry, finance, and commerce, I am not going to bet on the future.

I thank the committee for the privilege of appearing.
Senator O'MAHONEY. Thank you very much.

STATEMENT OF M. D. GRIFFITH, EXECUTIVE VICE PRESIDENT OF THE NEW YORK BOARD OF TRADE

Senator O'MAHONEY. Mr. Griffith, you may proceed. Please give your name.

Mr. GRIFFITH. My name is M. D. Griffith, executive vice president of the New York Board of Trade, located in New York City. This appearance is made upon instructions of the executive committee to convey the opinions of the members of the organization.

Senator O'MAHONEY. May I ask you to tell us what the board of trade is?

Mr. GRIFFITH. The New York Board of Trade is an organization of businessmen organized in 1873, incorporated by special act of the legislature in 1875. Our purpose is to promote the trade, commerce, and manufacturing of the United States, and especially of the city and State of New York. We are a membership body.

Senator O'MAHONEY. How long have you been associated with it?

Mr. GRIFFITH. 10 years. In May 1928 I assumed the office.

Senator KING. How many members do you have?

Mr. GRIFFITH. We have 538.

Senator KING. What businesses do they represent?

Mr. GRIFFITH. It is a very accurate cross section, I believe, of the business of the United States that is concentrated in New York. For example, we have among our membership practically all of the railroads, steamship lines, banks, insurance companies. A very large section known as our drug and chemical section had the very great honor of receiving Mr. Donald Richberg last night at a dinner at which some 1,800 were present. It is generally a cross section of New York business interests.

Senator KING. Some manufacturing?

Mr. GRIFFITH. Yes.

Senator KING. Are there any farm organizations?

Mr. GRIFFITH. No farm organizations. We have not been the popular, hail-fellow-well-met type of organization, being content with a small membership.

Senator O'MAHONEY. You said that certain railroads are members of the board of trade?

Mr. GRIFFITH. Yes.

Senator O'MAHONEY. How many corporations would you say are members?

Mr. GRIFFITH. I will be glad to furnish that to you.

Senator O'MAHONEY. Well, approximately.

Mr. GRIFFITH. A considerable number.

Senator O'MAHONEY. It is primarily an organization of corporations, and not one of individuals?

Mr. GRIFFITH. A large part of our members are corporations, and they designate a representative of the corporation to serve.

Senator O'MAHONEY. In other words, it is a picture of the commercial situation in the country at large?

Mr. GRIFFITH. Yes.

Senator O'MAHONEY. Including large business institutions and all kinds of corporations?

Mr. GRIFFITH. Yes. I think it reflects as accurately as possible a fair cross section of the business interests.

Senator O'MAHONEY. You may proceed.

Mr. GRIFFITH. The conclusions of our body were arrived at in a meeting of the members held on February 9 at 12 o'clock noon at the Hotel Roosevelt. Every member had been notified previous to the meeting that this subject would be submitted for consideration. The vote of the members at the meeting was unanimous.

May I express our thanks for this privilege of being heard. May I emphasize that the earnest hope of our organization is to be constructively helpful. I am under definite instructions to extend every possible cooperation.

The purposes which this bill seeks to serve are commendable. In attempting to arrive at a better form of society and a better system of economy under a sound government, all thoughtful persons will join. That there have been evils and abuses in business no one will deny.

Senator KING. Corporations and individuals?

Mr. GRIFFITH. Absolutely. That such evils and abuses should be stamped out and ruthlessly eradicated everyone will agree. The spectacle of government protecting citizens from the predatory few is to be applauded. If in reality there exist a limited number of soulless corporations, a limited number of individuals, or a limited number of families who for their own selfish advantage and personal aggrandizement inflict suffering and hardship upon our citizens, depriving them of life's comforts, necessities and conveniences, such condition should be brought to a speedy termination. But such indictments should be specifically made and specific remedies applied and we should not start from a premise comprising emotional generalities.

While in complete agreement with the authors of this bill as to the ends to be attained, we are forced to differ respectfully on the methods. Our study was made of Senate 3072 introduced November 16, 1937. We have not had time nor do we believe that others throughout the country have had time nor opportunity under current demands to study the committee print introduced February 19 of this year.

We believe that Federal licensing of private business would be unwise in a republic at any time and especially at the present. I have used the word "republic" in the earnest hope that our form of government remains a republic. But even in a republic there would be afforded under Federal licensing a rare opportunity for Government to exercise complete control over business. We would look to the future with grave misgivings, to the possible time when some future temporary administration of government might employ this power unwisely, when it might be possible for the Government to move mills and factories from one section to another, to uproot business and make it answer the demands of those temporarily in power.

Senator O'MAHONEY. Do you think there is anything in this bill which would authorize the Government to do that?

Mr. GRIFFITH. There is an impending threat that the license might be revoked.

Senator O'MAHONEY. But only for specific cause.

Mr. GRIFFITH. Yes; but cause can be found rather readily at times, if there is a strong desire to find one.

Senator O'MAHONEY. May I say to you now that I am very much afraid that you, like several others who have criticized this bill, have fallen into the misconception that it is intended to give the Government discretionary power. It does not, and I know I speak for Senator Borah when I say it never was our intention to give the Government or any other governmental agency discretionary power to interfere in business, or to change the rules of business, or to interfere with its management in any way whatsoever. Perhaps the word "license" is an unfortunate word. I suppose most people think of a restriction when they heard the word "license." But, actually, it means nothing more than a charter. Every corporation gets a charter of some sort.

Mr. GRIFFITH. That is correct.

Senator O'MAHONEY. It must get a charter from a public body.

Mr. GRIFFITH. That is correct.

Senator O'MAHONEY. And you have some here representing an organization which was given a charter by special legislation of the Legislature of New York.

Mr. GRIFFITH. That is correct.

Mr. O'MAHONEY. Your organization has no power or authority that is not contained within that charter.

Mr. GRIFFITH. That is correct.

Senator O'MAHONEY. The purpose of this bill is merely to say that, if a corporation is engaged in interstate commerce, which is the field of commerce that is committed to the Federal Government by the Constitution of the United States, it shall come to the representatives of the people of the United States for a definition of its power. That is all it means. That is all we attempt to do. Do you see any real objection to that?

Mr. GRIFFITH. Yes, Senator.

Senator O'MAHONEY. If private individuals desire to organize a corporation to engage in interstate or foreign commerce, that is to say, enter the field which belongs to the Federal Government, they have only to go to a State to obtain authority to do anything that State will permit in the field that the Federal Government must regulate.

Mr. GRIFFITH. Senator, the reason for that, it seems to me, off the record and outside of my limitations—

Senator O'MAHONEY. Do you mean that you do not want to be quoted, do not want to have your remarks appear in the record?

Mr. GRIFFITH. No. I mean that I am speaking personally, and not under instructions. It would seem to me that your reasoning is as clean as a hound's tooth, if you will permit that colloquial expression. However, it has been an established fact that there is a wide difference between the motives of the men who introduce bills and the ideas of the Congress that passes those bills, and the way they work out at some future time. I do not want to be misunderstood or have it thought I am indulging in fulsome flattery, but it is generally known that the authors of this bill stand in very high regard throughout the country. They certainly would not want to do anything to business that would be in any way harmful. But we are not sure you gentlemen will be here, or that you will be on the bench when this bill is brought up for judicial interpretation.

There is a very great difference between the high motives of the men who introduce and pass these bills and the way they might be interpreted by the courts. We are hopeful that our courts will continue to be the high tribunals they have always been in the past. We are going through great changes. The more we can reduce the possibilities of public evils and public abuses, it seems to us the safer the ground we are on.

Senator KING. You are apprehensive of the bureaucratic influence in the administration of the law?

Mr. GRIFFITH. It is entirely possible, sir, that at some future time we may be faced with that problem. We are going through a tremendous evolution. Government is changing, business is changing, society is changing. It is our thought to try to keep the basic line straight.

Senator O'MAHONEY. I can understand your fear, and I think I see the basis for it. For example, the Federal Trade Commission Act, which was passed in 1914, I believe, set up a body which was given authority to say for itself what was an unfair trade practice.

Mr. GRIFFITH. Yes.

Senator O'MAHONEY. Therefore, when corporations engaged in interstate commerce came before that Commission, they would depend upon the ruling of that Commission as to what did or did not constitute an unfair practice, an unfair trade practice.

Mr. GRIFFITH. Yes; it was an indefinite term.

Senator O'MAHONEY. And it depended upon what these particular individuals said.

Mr. GRIFFITH. Exactly, sir.

Senator O'MAHONEY. It did not depend upon anything in the law.

Mr. GRIFFITH. That is correct, sir.

Senator O'MAHONEY. The result of that was, of course, that with changes in personnel there would inevitably follow changes in point of view.

Mr. GRIFFITH. Exactly.

Senator O'MAHONEY. And with changes in point of view there would follow changes in decisions?

Mr. GRIFFITH. With a very honest point of view.

Senator O'MAHONEY. Honestly and sincerely.

Mr. GRIFFITH. Exactly.

Senator O'MAHONEY. All of that is out of this bill. There is nothing in this bill which gives the Federal Trade Commission any discretion whatsoever with respect to what a corporation shall or shall not do. The requirements are set forth in the bill itself.

Mr. GRIFFITH. Yes.

Senator AUSTIN. Mr. Chairman, may I ask a question at this point?

Senator O'MAHONEY. Certainly.

Senator AUSTIN. I am asking it of the witness, but I would be very glad to have the answer of the Chairman.

Mr. Griffith, I ask you where the boundaries of control are under these provisions which I quote from the bill, section 15, the first sentence on page 24:

The Commission is authorized to prescribe, amend, and modify such rules and regulations, not inconsistent with the provisions of this act, as may be necessary to carry out the purposes of this act.

And turning back to the purposes of the act, pages 1 to 4, I quote the last phrase of those purposes, to wit, lines 5 to 8 on page 4:

It has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce.

Taking those two together, where is the limit? I must confess that I am unable to find it.

Senator O'MAHONEY. Before you answer that, Mr. Griffith, let me answer my colleague.

Mr. GRIFFITH. Certainly.

Senator KING. I think we should let the witness complete his statement and then we can cross-examine to our hearts' content.

Senator O'MAHONEY. Very well.

Mr. GRIFFITH. I appear as a businessman. That would seem as wide as from one horizon to the other, and I think the answer could be found only after all the arguments are in, just what the decision is going to be. It does not seem to me that a decision could be arrived at from the language of this act. Have I answered your question?

Senator AUSTIN. Yes.

Mr. GRIFFITH. It is very broad and very general.

Senator BORAH. You have answered it in accordance with Senator Austin's view.

Senator AUSTIN. I confess that is my view.

Mr. GRIFFITH. I had those two points underscored.

Senator AUSTIN. I do not mean to shut off the Chairman. I want to hear his answer.

Senator O'MAHONEY. I am very glad to give it, and am surprised that it is necessary to explain it to such an eminent lawyer as Senator Austin.

The language on page 4 of the bill, which Senator Austin has quoted, is contained in what is specifically designated on page 1 as a declaration of policy. That is merely an explanation of the general policy, the point of view which we hoped was the point of view of Congress in enacting the law. There is not a single regulation, not a single provision of law in all that language. It is merely an argumentative delineation of conditions as they exist and the objectives to be at-

tained. It has no possible effect along the lines suggested. If it were eliminated from the bill it would not change the bill one iota.

With respect to the language on page 24, I can say just as definitely as it can be said that the rules and regulations there proposed are purely and solely ministerial rules and regulations. That section does not in the slightest degree empower the Federal Trade Commission to go outside the four corners of the requirements of the bill, and in the declaration of policy.

Senator AUSTIN. May I ask one further question?

Senator O'MAHONEY. Certainly. Are you cross examining the Chairman or the witness?

Senator AUSTIN. I think it is very helpful to have the views of the Chairman. Where else in the bill will the Chairman point out the purposes of this act?

Senator O'MAHONEY. I should point them out in section 3, providing for the issuance of the license; and in section 5, laying down the conditions of the license.

Senator AUSTIN. Then why not eliminate section 1?

Senator BORAH. It would not change the legal effect at all.

Senator AUSTIN. I think it would remove a state of fog.

Senator O'MAHONEY. I may say that when I first introduced the bill, which originally bore my name alone, I included a good deal of material which was not essential, largely for the purpose of education. Senator Borah was a good deal wiser than I, naturally, and he confined his bill to one particular item, and that was the antitrust feature, the monopoly feature. It might have been better if nothing of this kind had been put in. He was considerate enough to allow me to retain the declaration of policy, because perhaps I had a little sentiment for it.

Mr. GRIFFITH. May I say that if these requirements were an expression of our hopes, an expression of the ideals that we want to achieve, a raising of the already high standards of American living, a bettering of the condition of its citizens, I do not think there would be the slightest objection to it; but, on the contrary, we would all be for it.

Senator O'MAHONEY. If I could get you to say you would be for the bill if we would drop the declaration of policy, I would favor dropping it.

Mr. GRIFFITH. It would take a little more than that.

I should like to point out the language "when it becomes necessary." What is necessary? It is a very indefinite term. When is it necessary for us to give public relief? Is it to keep people from starvation, or is it to insure certain comforts and conveniences?

Senator O'MAHONEY. Under this bill, if it should become a law, the functions of the Federal Trade Commission would be comparable to those of the Secretary of State in most States of the Union by which charters are issued. The secretaries of state in the various States must have and do have rules and regulations whereby they carry out the purposes of the statutes.

Mr. GRIFFITH. Certainly.

Senator O'MAHONEY. If, for example, the incorporators of a new company would fail to supply all the information required by the statute, the Secretary of State would notify them, and the Secretary of State would have rules and regulations prescribing the manner and the method by which the material required by the statute is to be submitted. There is no substantial right or function included within

the power to make rules and regulations in this bill. Certainly none was intended.

Mr. GRIFFITH. Of course, it is true that the Secretary of every State is limited. If he is going to perform a function to create this corporation or legal entity, there certainly must be some system or method by which that is done. This bill, which I was going to come to a little later on, has for its purpose superseding that power in the various States and concentrating it in the Federal Government to issue a license of permit to transact business which is now the function of the States.

Senator BORAH. It is now the function of the States because the Federal Government has not exercised the power which is specifically given to it by the Constitution itself.

Mr. GRIFFITH. That is correct, Senator Borah. Some of us hope that will continue, because under that economic system we have built up we have accomplished some very remarkable things.

Senator BORAH. The State of Delaware may issue a charter, which is in effect a license, to a group of men to do business. When they get that license or that charter they pay no attention whatever to State lines.

Mr. GRIFFITH. That is correct.

Senator BORAH. They extend across the continent.

Mr. GRIFFITH. Yes.

Senator BORAH. And invade foreign countries.

Mr. GRIFFITH. Yes.

Senator BORAH. And exercise the power which has been given to them by a single State.

Mr. GRIFFITH. Yes.

Senator BORAH. Among those powers is that of engaging in interstate commerce.

Mr. GRIFFITH. Yes.

Senator BORAH. The Federal Constitution has conferred that power exclusively upon the Federal Government, to regulate interstate commerce. Do you think it is wise and do you think it is a sound policy to permit the State of Delaware to say upon what terms and conditions and with what authority business shall be carried on in every other State of the Union?

Mr. GRIFFITH. If you want a categorical answer, I will make my answer yes.

Senator BORAH. You do?

Mr. GRIFFITH. Yes.

Senator BORAH. There is where the bill and you are far apart.

Mr. GRIFFITH. Yes.

Senator AUSTIN. May I ask a question at this point?

Mr. GRIFFITH. I will give you my reasons for that.

Senator AUSTIN. Take the two, section 15 and the provision on page 3, lines 4 and 5, containing the words: "and ought to derive their charters by authority of Congress." What do you understand that to mean?

Mr. GRIFFITH. I have underscored the words "ought to", because I find that in many of these sections I can go right straight along with the first few lines until I reach the concluding sentence. I do not know that I have answered your question, or that I have understood

your question correctly. Do you mean what do I think the word "ought" means?

Senator AUSTIN. I am interested to know what you understand that word means. I am in such doubt about it that I would like to get your understanding.

Mr. GRIFFITH. I have the layman's definition of the word "ought", something that is desirable but not mandatory, something that would be for benefit and not for harm.

Senator AUSTIN. Would you regard it as a purpose of this bill, as specified in section 15, section 15 making what goes before and what follows all a part of it by this comprehensive phrase: "to carry out the purposes of this act." Taking the two together, this vesting of a bureau or commission with power to set up rules and regulations which would carry out these words, "and also derive their charters by authority of the Congress" as one of the purposes of the act?

Mr. GRIFFITH. That is a very vague statement. It seems to me it sets up and establishes powers that may be necessary to accomplish something which is not specifically stated.

Senator O'MAHONEY. May I say it is not one of the purposes of the act, and I do not think it would be so interpreted by any court.

Senator AUSTIN. Thank you.

Senator KING. I understand the position of Senator Borah, just announced, to be that under the interstate commerce clause of the Constitution the control of interstate commerce extends to instrumentalities engaging in interstate commerce, and that control belongs exclusively to the Federal Government?

Senator BORAH. I have no doubt that the Federal Government may prescribe the instrumentalities and the only instrumentalities which may be engaged in interstate commerce.

Senator KING. I do not agree with that. If that were true it would prevent a man in Idaho from shipping a few potatoes across the line into Utah, because that would be interstate commerce. It would interfere with the individual liberty and destroy all economic and industrial life.

Senator BORAH. I say that the Congress has the power to control interstate commerce and to regulate interstate commerce, and may also control those instrumentalities engaged in interstate commerce. Otherwise, it could not be effective.

Senator KING. We may argue that in some other forum.

Senator O'MAHONEY. May I say that from the time of John Marshall down to Charles Evans Hughes the Supreme Court has held the view announced by Senator Borah, that the control and power to regulate interstate commerce is vested exclusively in the Federal Government and cannot be interfered with by the States when the Federal Government chooses to exercise it.

Senator AUSTIN. May I interpolate this observation, that that power can be and is exercised just as effectively, just as often, where a corporation that is engaged in interstate commerce gets its charter from a State, as it could ever be if it got its charter or license from the Federal Government.

Senator BORAH. Yes; but John Marshall said it is not for the State to say what instrumentalities shall be used, but the Federal Government could use its own discretion.

Mr. GRIFFITH. May I make this observation? Learned jurists may have different opinions as to political philosophies and functions of government. As a layman and businessman, I think we would be inclined to feel that, even though it were within the sovereign right of government to do that, we might go to the word used in this act—"ought". Maybe we ought not to do it. Maybe we ought not to exercise the power which is inherent in the Government, especially in view of the fact that many citizens feel the exercise of that power would work a hardship and defeat the end to be accomplished. Granting that it is within the power of the Federal Government to regulate interstate commerce, we are not confronted with the alternative—"either this or nothing." That is the reason we have our antitrust laws. Effective enforcement of laws of that kind may stamp out the abuses without the necessity of setting up this central authority. Senator BORAH. All these corporations are enjoying the privileges of the Federal Government in the sense that they are engaged in interstate commerce.

Mr. GRIFFITH. Yes.

Senator BORAH. The channels of interstate trade are exclusively under the control of the Federal Government.

Mr. GRIFFITH. That is correct.

Senator BORAH. The sole question is whether or not it is wise for the Federal Government to regulate interstate commerce and the instrumentalities engaged in interstate commerce, or whether it is wise for the Federal Government to regulate interstate commerce and let the States regulate the instrumentalities.

Mr. GRIFFITH. There is a distinction between domestic commerce and our foreign commerce. The Government of the United States will exercise a rather rigid control over our domestic commerce, but by the same reasoning it would not be necessary for the Federal Government to exercise control over foreign commerce. With respect to all these things which are imported from foreign countries, should we attempt to make sure that they are given at a price which is not disadvantageous to us?

Senator BORAH. Yes; but it regulates corporations in foreign trade if they come within our jurisdiction.

Mr. GRIFFITH. Yes.

Senator BORAH. When they do that we may regulate their conduct.

Mr. GRIFFITH. Yes.

Senator AUSTIN. We try to do that sometimes. We have imposed as a condition of entry into this country that the goods shall comply with the similar conditions that are imposed by our Government upon the production of similar goods in this country.

Mr. GRIFFITH. They must be of a certain standard.

Senator BORAH. They come within the jurisdiction of this Government when they send their goods in here.

Mr. GRIFFITH. Yes.

Senator BORAH. And we may proceed to regulate them.

Mr. GRIFFITH. That is true.

Senator BORAH. You represent a body of organized business men, and we recognize your ability in dealing with business matters. The authors of this bill feel that there are abuses existing in business and commerce that should be corrected. What we would like, if this bill is a mistake, is to have constructive suggestions as to how we can pro-

fect the people of the United States under the law against these evils and abuses which everybody concedes have been practiced over and over again.

Mr. GRIFFITH. Let me observe that "evils" is not a closely defined term. We speak of "wrongs" and "evils." They are more or less relative. Many things which seemed very bad in 1920 are not so regarded in 1938. You no doubt remember the advertisements of cancer cures, consumption cures, and worm cures. That was a good one. Today those things seem to be entirely wrong. They are evils inflicted on society. In those days perhaps our standard of right and wrong was not as high as now.

Senator O'MAHONEY. Have you been reading any of the cigarette advertisements that would lead the country to believe that cigarettes are medicinal, good for the nerves, and the best thing in the world for athletes?

Mr. GRIFFITH. If a man does not encounter them he must spend his life in a dungeon without any intercourse with the outside world.

Senator O'MAHONEY. There is no difference, so far as ethical standards are concerned, is there, between an advertisement which pretends to cure cancer and an advertisement which induces the people to believe that tobacco is a healthful product?

Mr. GRIFFITH. I am not saying this because the tobacco people are members of our organization. I do not know whether they are or are not. I do not know about cigarettes. I do not smoke them myself. My weakness is cigars or pipes.

Senator O'MAHONEY. Of course, that is aside from the issue.

Senator AUSTIN. I think the suggestion just made by Senator Borah is a very excellent one. I do think that leaders of thought in business ought to afford Congress some help in these matters. For example, take the Senate. The idea that 96 men in the Senate can wisely legislate for the activities of 130 million people scattered all over the whole continent is simply overwhelming. We ought to have constructive suggestions from business. I think all must agree upon the objectives of this bill. I have no pride in authorship, and I do not repeat it here because I would not try to stimulate the idea in your mind, but I think your organization should make some helpful suggestions on this bill.

Senator BORAH. The practice in the past has been to say that this or that is all right and should not be done, but there is nothing offered in lieu of it. I think something should be done in that respect, and if you people do not give it the benefit of your judgment the result may not be satisfactory to you.

Mr. GRIFFITH. I think that is another very high ideal. I want to be conservative in this statement. It is my considered judgment, dealing every day with businessmen, that they do want your help.

Senator O'MAHONEY. I have no doubt of it.

Mr. GRIFFITH. I think the building of high ideals is going to be one of the finest things we can do. Businessmen feel considerably disturbed at a time—I will not say what I was going to say, but I will let it go.

Senator O'MAHONEY. How far have you to proceed with your statement?

Mr. GRIFFITH. I have very little more.

Senator O'MAHONEY. Very well. Proceed.

Mr. GRIFFITH. We foresee the possibility of those in government insisting that their friends be made officers or directors of corporations. We foresee the possibility of forcing substantial campaign contributions to the party at that time in power. We foresee a grave risk that a combination of politics and business may foster and promote the evils of business and politics rather than their virtues.

It is our modest opinion that this bill would amount to a violation of States' rights; it is another broad step in the direction of centralization of power in the Federal Government.

We feel especially that even if these objections were unfounded and our fears uncalled for this is not the opportune time to pass such a measure. We are going through a disturbed economic condition. Whether the present condition be a recession or a part of a major depression, it is serious.

It seems to be generally agreed that our salvation lies in the upturn of business and the employment of our citizens in private enterprise.

It is a great mistake to think of our American economy in the term of "rugged." Our economic system is a highly complicated and a very delicate mechanism; easily disturbed, easily thrown out of alinement; its ruggedness only applies to its recuperative ability. Now is not the time to administer a shock. With every business index falling, business needs the encouragement of government and not uncertainty.

Mr. Chairman and gentlemen, the representative of the New York Board of Trade, respectfully thanking you for this opportunity, earnestly pleads that this bill be defeated.

Senator O'MAHONEY. Let me say this additional word. From my point of view, it seems to be perfectly clear that the modern corporation is a major instrumentality of the national business which affects the whole national life of our people.

Mr. GRIFFITH. We agree entirely.

Senator O'MAHONEY. The large, modern corporations have become more important to the economic life of the people than many of the States.

Mr. GRIFFITH. I think so. It would require some comparison.

Senator O'MAHONEY. There has been a change in our economic conditions.

Mr. GRIFFITH. Yes.

Senator O'MAHONEY. A State cannot be admitted into the Federal Union until its charter is approved by the Congress in behalf of all the people.

Mr. GRIFFITH. Yes.

Senator O'MAHONEY. The theory of this bill is that a corporation, which is more important in many instances than some State, sometimes with more stockholders and employees than some States have people, ought likewise to submit its charter to the representatives of all the people before it can engage in interstate commerce.

Mr. GRIFFITH. If we want to get bilge water out of the holds of a boat when the sea is stormy, let us not take the bottom out.

Senator O'MAHONEY. Certainly not. Thank you very much.

The committee will stand adjourned until next Tuesday at 10:30 o'clock.

(Whereupon, at 12 noon, the committee adjourned until Tuesday, March 8, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

TUESDAY, MARCH 8, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to adjournment, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman) presiding.

Present: Senators O'Mahoney (chairman), Logan, Borah, and Austin.

STATEMENT OF MERVIN K. HART, PRESIDENT, NEW YORK STATE ECONOMIC COUNCIL

Senator O'MAHONEY. Mr. Hart, you may proceed. First give your name and state whom you represent.

Mr. HART. My name is Merwin K. Hart. I represent the State Economic Council of the State of New York.

Senator O'MAHONEY. What is that council?

Mr. HART. That is an organization, Mr. Chairman, formed several years ago, a membership corporation, for the purpose of stimulating private enterprise.

Senator O'MAHONEY. You say it is a corporation?

Mr. HART. It is a corporation.

Senator O'MAHONEY. Chartered where?

Mr. HART. Under the laws of the State of New York.

Mr. O'MAHONEY. A membership corporation?

Mr. HART. A membership corporation.

Mr. O'MAHONEY. What sort of membership?

Mr. HART. It is a cross-section of private enterprise.

Mr. O'MAHONEY. Are the members individuals or corporations?

Mr. HART. Both.

Mr. O'MAHONEY. How many members have you?

Mr. HART. About 1,500.

Mr. O'MAHONEY. How many of those are corporations?

Mr. HART. A small minority.

Mr. O'MAHONEY. About how many? That does not bother you, does it?

Mr. HART. Not a bit. I would say possibly a couple of hundred out of 1,500.

Mr. O'MAHONEY. Could you give us the names of some of those corporations?

Mr. HART. I could from memory; yes. Some are large, as I say, and some are small.

Mr. O'MAHONEY. Name one of the large ones.

Mr. HART. You are interested in the large ones? Well, let me see. One of the larger ones would possibly be the Albany Savings Bank.

Mr. O'MAHONEY. Are there any corporations among your members which are engaged in international or interstate commerce?

Mr. HART. Oh, yes. I would say many of them are. So far as I can see, a very great number of the corporations are engaged in commerce.

Mr. O'MAHONEY. That is right. Apparently, you cannot recall many of those names from memory. Will you be good enough to furnish the committee a list of the corporate members of your organization?

Mr. HART. Senator, we have never given out a list of our membership. I will take that up with our governing board.

Mr. O'MAHONEY. It is not a secret, is it?

Mr. HART. It is an admirable cross-section of all private enterprise, including workmen, farmers, small-trades people, and includes some large corporations.

Mr. O'MAHONEY. You can understand that a committee of Congress studying legislation desires to know the source of the advice it gets, can you not?

Mr. HART. I will be very happy to take the matter up with the board and I think they will be willing to do it.

(Mr. Hart later submitted the following list:)

Eastman Kodak Co., Rochester, N. Y.; Bethlehem Steel Co., Buffalo, N. Y.; Hooker Electrochemical Co., New York City; International Business Machines Corporation, New York City; United States Steel Corporation, New York City; Manufacturers Trust Co., New York City; Crouse, Hinds Co., Syracuse, N. Y.; City and Suburban Homes Co., New York City; General Electric Co., Schenectady, N. Y.; National Dairy Products Co., New York City; Albany Savings Bank, Albany, N. Y.; Mathieson Alkali Works, New York City; Bigelow-Sanford Carpet Co., Amsterdam, N. Y.; Skenandoah Rayon Co., Utica, N. Y.; and West Virginia Pulp and Paper Co., New York City.

Mr. O'MAHONEY. What is the membership fee?

Mr. HART. The membership fee varies. The membership fees run from a dollar up.

Mr. O'MAHONEY. Up how far?

Mr. HART. We have about a dozen or fourteen, I should say, that subscribe a thousand dollars or more. We have a large number that give us \$5 or \$10, and some \$1.

Mr. O'MAHONEY. What fixes the fee?

Mr. HART. There is no fixed fee. We ask them to give what they think they can give, under the circumstances.

Mr. O'MAHONEY. The contributions that may be made to the work in which you are engaged are largely voluntary?

Mr. HART. They are entirely voluntary. We live entirely by voluntary subscriptions.

Mr. O'MAHONEY. Do you maintain an active office?

Mr. HART. We have an office in New York City, and have had for about 5 years. We also have an up-State office in Utica. Our membership includes individuals or corporations in every one of the 62 counties in New York State.

Mr. O'MAHONEY. It is largely a State organization?

Mr. HART. It is a State organization.

Mr. O'MAHONEY. What sort of work is done by the officers or acting officers?

Mr. HART. We are mainly concerned with two things, entirely concerned with two things: First, matters that tend to raise the cost of Government, such as taxes. We do not concern ourselves much with taxes as such. We are interested in the matter of appropriations by the legislature or Congress.

Senator O'MAHONEY. I suppose you would be just as concerned about government that would take the form of prices fixed by monopolistic practices at a high level as any other form, would you not?

Mr. HART. Yes; though I would expect the aggregate tax burden would be more affected by legislation than by all the monopolistic arrangements I know anything about. That is the greatest monopoly, it seems to me, that we have.

Senator O'MAHONEY. I did not mean to take you from your prepared statement. You may proceed.

Mr. HART. Mr. Chairman and Senator Borah, I have practiced law, but have not practiced it for some years. What I have to say is from a layman's standpoint. What I hope to do, while bearing in mind the legal aspects of the questions involved, is nevertheless to confine what I say almost wholly to the economic and social implications.

I have read much of the testimony that has been laid before this committee, and have glanced over the rest of it as intelligently as possible. In it I find assertions that some of the corporations the bill is intended to affect have been guilty of abuses. I assume, for the sake of this argument, that some at least of these abuses are real.

The great question before this committee is, I take it, whether the remedy this bill proposes is on the whole a sound and wise one. My belief is that it is not.

Senator BORAH. That is an important question.

Mr. HART. The President has recently indicated the great need of expanding the production of wealth in the United States to \$100,000,000,000 a year. Will this bill help give us this greater production?

Senator BORAH. Do you include the question of distribution of national income as well as the raising of it?

Mr. HART. Of course; but you cannot distribute until you produce.

Senator BORAH. If we can distribute after we produce we will be very lucky, I think.

Mr. HART. On the contrary, while there are inequalities, I have visited some other countries from time to time during the last 30 years. I do not know of any country where there is as wide a distribution of a reasonable amount of wealth as there is in the United States. Do you, sir?

Senator BORAH. No; but I do not want to see this country in the same condition that some of the other countries are in.

Mr. HART. I am afraid we are headed that way, but perhaps not for the same reasons that you have in mind.

Will this bill produce greater honesty in those few corporate officials who are now inclined not to be honest? Or will it produce only that kind of greater honesty that prevails in a prison—a kind of enforced honesty, there being, because of the restrictions imposed, little opportunity for dishonesty. Will this bill give us greater production so that we will have more to distribute, which will, in turn, raise the standard

of living? Will the bill do what its framers hope it will do? Or will it, instead, produce greater evils than it cures?

I read with interest the statement of Mr. O'Brien of the Securities and Exchange Commission. I did not get the impression that he could recall many instances in which abuses had taken place. Since this bill bears so closely on the corporation laws of the several States, it seemed to me a little surprising that he did not know whether or not his Commission has a digest of these laws. He seemed to favor the bill; but I did not gather that his testimony greatly supported his opinion that the bill is needed.

But there are undoubted abuses. Undoubted disadvantage arises in many ways from the fact that we have the corporation laws of 48 different States—that certain corporations take out their charters in one State and do business in others. The question is, will the remedy proposed by the pending bill do more harm than good—more harm, I mean, to the interests of the people as a whole? For that must be the criterion. And it is my contention that it will do very much more harm.

Senator O'MAHONEY. If I correctly understood your statement, you do not deny the existence of certain abuses.

Mr. HART. Yes.

Senator O'MAHONEY. And then you proceed to assess this bill upon the consideration as to whether or not it will produce greater abuses than those which we now endure.

Mr. HART. That is right.

Senator O'MAHONEY. Is that based upon the assumption, which so many of the critics of the bill make, that this measure conveys to a Government body, the Federal Trade Commission, discretionary power to interfere in the conduct of business?

Mr. HART. I think it does, Senator. I think the record shows that.

Senator O'MAHONEY. That would be a matter of opinion, but to develop your point of view, if it does not convey that discretionary power of interference, would your criticism be allayed at all?

Mr. HART. I do not think at all; not appreciably.

Senator O'MAHONEY. Then that is not the source of your criticism.

Mr. HART. It is one source.

Senator O'MAHONEY. I will not interfere further. Proceed with your statement.

Mr. HART. Let me hastily comment on some of the outstanding provisions.

In the title it is called—

A bill * * * to assist the several States in * * * enlarging purchasing power for goods sold in such commerce * * *

But I do not find anything in its 28 pages to indicate it will in any way accomplish such a result.

The "findings of fact and declaration of policy" are, I assume, for the purpose of laying a foundation upon which the structure of the pending act may be erected. In these is the statement that "the power to regulate such commerce includes the power to foster and enlarge such commerce." This power by itself would be beneficial if it worked out that way. But I find nothing in the entire bill to indicate that it would. Indeed, I feel sure that the effect would be precisely the opposite.

Section 1 has a "finding of fact"—

* * * that the growth of such corporations and such concentration of wealth in corporate hands has effectively impaired the economic bargaining power of labor employed by such corporations.

Is this one of the real reasons for this bill? Are we to give the Federal Trade Commission authority in labor matters, thereby creating at once a conflict of jurisdiction between the Federal Trade Commission and the National Labor Relations Board? I miss the point of dragging in a labor question. Similarly, the provision on page 10 that—

no female employee * * * who performs services approximately equivalent to those performed by male employees shall be discriminated against as to rates of pay or in rights granted or in any other manner—

places upon the Federal Trade Commission the task of determining the question in each of a hundred thousand plants as to when the services of male and female employees are "approximately equivalent." I suspect that one effect of such a provision would be to make it harder for some women to keep their jobs; or, if unemployed, to get new ones.

I view with misgiving the sixth subdivision of section 1, that—

for the purpose of executing and exercising the power granted to the Congress * * * for the purpose of preventing the channels, facilities, and corporate instrumentalities of interstate commerce from being utilized to promote unfair or monopolistic methods of competition, in or relating to and for the purpose of protecting, fostering, and increasing such commerce, to the end that the capacity of the people to purchase commodities sold, exchanged, transported, or delivered in the course thereof, may be increased with consequent reduction of unemployment and correction of the maldistribution and concentration of economic wealth and power, it has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce.

That seems to me, Mr. Chairman, to be a most comprehensive sentence.

I cannot think of any phrase that has been left out of that clause. And I most strongly disagree that for the purpose intended any such kind or degree of regulation is necessary.

Government regulation has increased at an appalling rate for 5 years. And now, after billions of the people's money have been spent for the purpose, the economic structure has toppled and is falling. Congress and many of the States are burdening private enterprise with regulatory laws as burdensome as, or perhaps even more burdensome than, this. The records up to no later than last Saturday report that the present depression is increasing.

Senator BORAH. You limit the increase in regulation to the last 5 years. What was it that caused the fall in 1929 and 1930?

Mr. HART. Overexpansion, I think, Senator. You can trace it back to the war—the war, followed by the aftermath of speculation. We have had that period time and time again before in history. Everybody thought all he had to do was to buy some securities or some stock, and apparently everybody went crazy.

Senator BORAH. Do you think there should be no regulation or control of that matter at all?

Mr. HART. No; I would not say that. I think some of the control has been salutary, a good deal of it. I mention the 5 years simply because it is a matter of common knowledge that commencing 5 years

ago the matter of regulation was accelerated unexpectedly, and, I think, unduly.

Senator BORAH. That regulation, wisely or unwisely, was brought on by reason of what happened before that time. We were in a fearful condition of economic chaos, and the country was threatened with bankruptcy. Banks were closing and business at a standstill.

Mr. HART. We are approaching bankruptcy today.

Senator BORAH. But it was then a question of whether we would stand still and do nothing or try to do something. We tried to do something and undoubtedly made some mistakes.

Mr. HART. Senator, an old friend of mine, who was district attorney of Nassau County, N. Y., came into my office in 1932, with several other friends. The depression was then at its bottom, I suppose. He remarked that he recalled the situation in 1873, and he said: "That was worse than this is now, because the great proportion of all the people was unemployed. The difference between that and other depressions prior to 1929 was that the people depended upon themselves." He said: "My father had a job, and had a wife and six children. He had a brother who had a wife and seven children, who lost his job. As a matter of course, the brother with his wife and several children moved into our place, and we slept two or three in a bed, and we did the best we could, and we got through the depression and so did everybody else."

Senator BORAH. That man must have known the people he was going to move in with were also his friends or relatives.

Mr. HART. Yes.

Senator BORAH. The existing situation is wholly different.

Here are millions of people who were dependent upon jobs, and the jobs ceased. It was not a question of whether a man could move in with his family or relatives, but the entire group was out of employment.

Mr. HART. It was different in this, I think, perhaps, that the most of the distress was in the cities. But the point I was trying to make was that, commencing in 1933, we began a tremendous acceleration of this business of regulation, the need of regulating everything.

Senator LOGAN. And you think that regulation has been harmful?

Mr. HART. Senator, that is quite a contrast.

Senator LOGAN. Yes. I did not hear all of your statement, but I understand your complaint is that the Government is trying to carry on too much regulation. Just what regulation is it that has brought on harm and has injured business?

Mr. HART. Well, it is the aggregate of them all. But answering your question specifically, I would enumerate the N. R. A., I would enumerate the A. A. A., I would enumerate the new farm bill, and I would certainly enumerate the Wagner Labor Relations Act. There are plenty of them. I will be glad to submit a list later.

Senator AUSTIN. What about the Guffey-Vinson Coal Act?

Mr. HART. I would say that is probably one.

Senator LOGAN. How about the Securities and Exchange Act?

Mr. HART. That has been built up to a certain extent. I have no doubt that it certainly has held back the issuing of securities, if I am correctly informed, in many cases where men would have been put to work if the securities could have been issued.

Senator BORAH. Some of us will agree that the N. R. A. was a mistake, and there was too much regulation there. We will agree that the Guffey coal bill was a mistake. What I am seeking to know is how we could have dealt with the situation which came upon us without regulating it through some means exercised by the Government. Undoubtedly mistakes were made, but they never would have been made, and there never would have been any regulation, if it had not been for the economic crisis we were in. What brought about that crisis may be difficult to say. We had just passed through a period of prosperity.

Mr. HART. I know; but history shows it works that way. It was a secondary reaction. We have had instances of that before. That is just exactly what happened here. But, Senator, I think it is recognized by a great many people, and I think by a great many of you, that some of the regulation we started out on in 1933 was ostensibly emergency regulation.

Senator BORAH. The emergency was still here.

Mr. HART. It would not be if we had let business try to work out its own salvation.

Senator O'MAHONEY. Was not that the objective of the N. R. A.? Was not that exactly the principle of the N. R. A., to let business all over the country sit down around a table like this and draw up its own codes, and was not that the trouble with it?

Mr. HART. Well, it did not work out, Mr. Chairman, because we had representing the Government, and necessarily so if they were trying to regulate those things, a large number of men and many women who worked with the Government in connection with the making of these codes with little or no experience compared with the people charged with the responsibility of carrying on those enterprises. They had the power to hold back and restrict business, but made no contribution to the successful carrying on of the business.

Senator O'MAHONEY. I am not defending the N. R. A. If I had been a Member of Congress then I would have voted against it, just as I voted against the farm bill. But the principle of the N. R. A. was to permit businessmen to make combinations in restraint of trade; and when they undertook to make combinations in restraint of trade with the approval of the Government, the result was bad. The principle of this bill is to prevent combinations in restraint of trade. I am not defending the N. R. A. I am sorry I interrupted you.

Senator AUSTIN. The point you make is the regimentation of business and the elimination of freedom of competition, which is an objectionable element.

Mr. HART. Yes. I will try to develop that point a little later in my statement.

Senator AUSTIN. I assume that you will point out before you get through that, even if you could conceive of this powerful regimentation being a benefit when in the hands of a people's government, to quote a certain person in high authority, nevertheless, if it got in the hands of the political machinery of an economic aristocracy, it would create shackles on the balance of the people, would you not?

Mr. HART. Yes.

Senator BORAH. Why would it not be better to establish definite rules and write them into the law, so nobody could control the situation except the law? And that is what this bill undertakes to do.

Mr. HART. That would be the kind of enforced honesty that you find in the penitentiary.

Senator BORAH. Well, some of them ought to be there.

Mr. HART. I suppose so, but is that not true of any class of people? I believe the people who are running private enterprises are just about like any other group of people. If anything, they are more honest and more intelligent.

Senator BORAH. It will not do to give a man such economic power that he can fix prices for his own benefit.

Mr. HART. Senator, I do not think that that has been abused. I read in some of the testimony last year that criticism was made of General Motors.

Senator O'MAHONEY. There is no criticism of General Motors.

Senator BORAH. I did not hear any criticism of General Motors.

Mr. HART. A good deal was said about bigness.

Senator O'MAHONEY. What was said in respect to General Motors was stated by myself. I want to disabuse your mind of the idea that I was speaking in criticism. I was not criticizing General Motors. I was merely pointing out that General Motors is a national corporation; that it has more employees and more stockholders than many States have inhabitants; that it is engaged exclusively in interstate and foreign commerce; that interstate and foreign commerce is committed by the Federal Constitution to the National Government for regulation; that as a result many huge corporate organizations like General Motors were created by the several States, and were not regulated by the States, not in the sense of the Government interfering with what they do in connection with their business, but that the States from which they got their charters did not impose at the very outset some of the restrictions which common sense indicates ought to have been imposed.

For example, the corporate device by which monopoly is created could easily be prevented at the very beginning by denying the corporation the power to do those things. There is nothing whatever in this bill that in any degree is opposed to size. When size is efficient and is based upon the contribution to public welfare, I have no quarrel with it whatsoever; but when size throttles competition, drives small businessmen out of business, and thereby restricts employment and commerce, I think it is wrong.

Mr. HART. Senator, I think the idea is almost universal in business, and particularly in all large business enterprises, that what really counts in the long run is the price at which they can make their product attractive, because that gives the greatest possible volume.

Senator LOGAN. Whether the business be big or whether it be little, the men engaged in the enterprise are entitled to a fair return, under all the circumstances, on the capital invested. That is correct, is it not?

Mr. HART. They are entitled to it if they can get it. Many business ventures have failed.

Senator LOGAN. But they are not entitled to any more than a fair return?

Mr. HART. What is a fair return?

Senator LOGAN. That is a question to be determined. But is any man who invests his capital entitled to any more than a fair return on the money invested, under all the circumstances?

Mr. HART. No. May I add this?

Senator LOGAN. Yes.

Mr. HART. I do not think on the average, and we have been talking and must talk about the average, that the return is very great. The National Industrial Conference Board has produced figures showing that in the year 1929, the most profitable year of private enterprise in this country, the average return on all the business corporations was only 5.4 percent.

Senator LOGAN. You are talking about the average, where some may get 100 percent and others lose money.

Mr. HART. Yes.

Senator LOGAN. Take the question of labor. I suppose everyone will agree that labor should have a fair rate, and when it gets a fair rate it is not entitled to any more; and the man who runs the business, the entrepreneur, is entitled to a fair salary for his experience and his skill, and he is not entitled to any more. If capital gets more than a fair return on the investment, if the business manager gets more than a reasonable salary, and if labor gets more than a reasonable wage, then they take it illegally in some way from the public.

Mr. HART. I do not think it is as simple as that. I do not think it is as simple as that, Senator. After all, the statute provides that the worker has a first lien on the assets of a corporation for his wages. There is a second lien for workmen's compensation costs. I do not know whether the social-security cost would come in there or not, under our present set-up. In many cases the people who actually run the business would get nothing out of it.

Senator LOGAN. I agree with you about that; but I am speaking of the abstract principle that when capital gets a fair return, when labor gets a fair rate, when the entrepreneur gets a fair salary, if they take more than that, they take it from the public, and there ought to be some limitation to prevent them from building up these tremendous fortunes by charging the public more than a fair price.

Mr. HART. I will be glad to take any industry that has been mentioned. Something has been said about General Motors. Does General Motors get too much for its cars, for its Chevrolets, for its Cadillacs? Does Ford get too much? I took a Ford car abroad a few years ago, with my wife, and we drove around through France and Germany and a few other countries. I paid \$720 for that car. It was a cabriolet. That was in 1935, and the lowest wage paid at that plant was \$6 a day. I paid \$720 for the car. In France I looked into the car more nearly comparable with it, and I found that it would cost the equivalent of \$2,400 in American money, and labor was getting \$2 a day.

Senator LOGAN. That may be true, but the fact must remain that if Mr. Ford had not sold his cars at a price higher than was necessary in order to make a reasonable profit, and a necessary amount of money to take care of labor and invested capital in his business, and if the business management had not received a salary above what was necessary, they could not have built up a billion-dollar fortune.

Mr. HART. Have you seen the statement made by the Ford Co. that their average profit on each car amounts to \$20?

Senator LOGAN. I have seen that statement; but, regardless of what the average profit is, if you take the three elements I have mentioned,

it must be clear that if any concern is able to build up such a tremendous fortune it must be through its ability to take more from the public than it should take. If it can do that, it ought to be prohibited.

Senator O'MAHONEY. Mr. Hart, let me suggest that we refrain from interrupting you for a little while. I am not trying to hurry you through, but to permit you to make your statement.

Mr. HART. Thank you. I will be as brief as I can, Mr. Chairman.

The American corporation has given to the common man and woman that immeasurable benefit that flows from large-scale operations—namely, low-cost production, low prices. Many of these larger corporations, of course, are under the control, for certain purposes, of the Securities and Exchange Commission. The great majority of all corporations are not. But the salient fact, I wish to point out, is that these corporations have performed most of their great service with little or no interference by Government, whether Federal or State. Government has merely stood out of the way and thousands of responsible leaders, with the loyal teamwork of millions of workers, lifted the American standard of life and living to a level no other nation has ever known.

All, I understand, of the 48 States have their laws for the organization of corporations. The development of these laws has been an evolution. Some abuses probably have taken place in every State. But the legislatures of the several States have certainly been closer to their people—geographically, at any rate—than Congress can possibly be to the people of the United States as a whole. Is it not reasonable to assume that these legislatures cognizant of the vast benefits that corporate organization has brought the people, have thought it wise not to develop their corporation laws faster—not to develop further the idea of regulation and control? And have we not found in many fields that the 48 States are, in effect, laboratories for the trying out of new laws? Has not this very variation in the corporate laws been found to be on the whole a distinct advantage to the people?

The main principle underlying this bill seems to be that because a corporation has here and there offended, all corporations are culprits—the public safety demands they be put in irons.

I am not sure I fully understand the bill's definition of "commerce" in section 2. It seems to mean that every corporation—except common carriers, broadcasting companies, banking and insurance corporations, and publishers of newspapers, magazines or books—come within the meaning of the bill, if their activities take place in more than one of the 48 States. Indeed a corporation is deemed to be in interstate commerce, and, therefore, comes under the bill, if it so much as purchases raw material or equipment from another State, or if it sells or transports in or to any other State any article produced. Any corporation that comes within the above definition, if at any time during the past 3 years its gross assets, as shown by its books, exceeded \$100,000, comes under the proposed law.

I submit that this is a tremendous stretching of any reasonable conception of engaging in interstate commerce. Yet, wherever the limits are set, there would be undoubtedly be border-line cases where it would be a question to be decided in the courts whether a given corporation was or was not engaged in interstate commerce—whether it came within the purview of this proposed act, or escaped it. There would come into existence an entire new field of Government regula-

tion—a field in which there would be constant need by every corporation head to ascertain whether he came under Federal or State control; and if under both, then how much under each. There would be an entire new set of Government inspectors to harass the corporations. There would be just one more set of hurdles for the businessman to take. He would have one more Government master.

Before any license is issued, a sworn statement must be given to the Commission. This sworn statement must contain a large variety of specified data, including—

such further information with respect to the operations of the applicant as the Commission may by regulation require as necessary or appropriate in the public interest, or for the protection of investors.

This omnibus clause was easy to write and throw in. But the amount of labor and grief thereby added to the burdens of our corporation leaders may be well nigh infinite. The mere decision of the Commission that any regulation is necessary or appropriate in the public interest, or for the protection of investors, will make it so. However trivial or superfluous the requirement—however burdensome compliance may be, there will be no course but to comply.

Why is any such provision as this necessary from any standpoint—unless the aim be to substitute the judgment of a Government bureau at Washington for that of the officers and directors charged by the owners of these multitudes of businesses with the successful conduct of their enterprises.

Then follows this significant provision:

The applicant shall also file with the Commission a certificate duly authenticated by its officers that by vote of its board of directors, it intends to engage in commerce, subject to all acts of Congress regulating such commerce or limiting or affecting the rights, powers, or duties of corporations or associations engaged therein.

Is not this provision an attempt to require each corporation to waive certain constitutional rights?

Senator BORAH. What constitutional rights?

Mr. HART. The right to claim that he did not lawfully under the Constitution come within the meaning of the law. Suppose he thought sure he did not come within it, and the board of directors voted that he did, and most board of directors would do so, the corporation never could be heard, I should think, to say the law was not constitutional.

Senator O'MAHONEY. Do you think an applicant would file an application for a license if it did not believe it was subject to the law?

Mr. HART. Yes; I think very likely it would. Most businessmen are extremely occupied with trying to keep their noses above water. Along comes a demand from Washington for filling out the attached application.

Senator O'MAHONEY. There is nothing of that kind in this bill. Where is there a provision in this bill which would authorize the Federal Trade Commission to send an application to a businessman and tell him to fill it out?

Mr. HART. How else would he make his application?

Senator O'MAHONEY. Upon application by himself. He would take the initiative.

Senator AUSTIN. Let me call attention to section 7, which has to do with competing corporations. It does not make any difference

whether a man applies or not, section 7 puts the whole world under that power.

Mr. HART. He can be haled into court.

Senator AUSTIN. Sure. He has got to come under it. If this bill becomes a law every businessman who comes within the description of the act must obey.

Mr. HART. At his peril.

Senator AUSTIN. Yes. No one escapes. There is no more freedom to say whether you will apply or not. This bill reaches you if you do apply, and it reaches you if you do not apply, provided you are competing with the licensee.

Mr. HART. That is my understanding.

Senator O'MAHONEY. I will make my statement in respect to that at a later time.

Mr. HART. Applications are to be made, and licenses to be issued, in such manner as the Commission shall by regulation prescribe. Each license is to continue in effect until revoked.

Every corporation shall have power by its charter—

By mere act of its board of directors, to accept any charter restriction that Congress imposes as a condition of its right to engage in such commerce, the law of any State or the decision or order of any State authority of any State statutes or regulations to the contrary notwithstanding.

The corporation under the proposed law would become almost in toto a creature of the Federal Government. The States, as against the Federal Government, would have about as much power as the King of Italy had when Mussolini moved in.

In subdivision (f) of section 6 it is provided—

That the licenses shall have only such powers as are incidental to the business in which it is authorized to engage.

Here is another broad provision which seems to me is almost unlimited, or might be. It would give the Commission practically unlimited authority to circumscribe the activities of any corporation or class of corporations—to do it at Washington, 1, 2, or even 3 thousand miles from the location of the corporation.

Subdivision (g) of section 6 in effect provides that the holders of shares, which under State law have no vote, shall, nevertheless—in spite of those State laws—have the right to vote—and all this in spite of the fact that such stock has been put out with the express understanding that it has no power to vote.

Mr. Chairman, is this not going too far in the effort to protect the stockholders? And I have nothing against the stockholders. I do not believe the vast majority of stockholders want such a right, unless they were in a hole or had not read the certificate or made intelligent inquiry. In that case, perhaps any of us would. No decent man will condone the misrepresenting of facts to an investor. No one doubts that there have been cases of actual fraud. But how much damage to all private enterprise is Congress willing to inflict in order to try to protect those who in most cases are careless investors?

The bill takes away from corporations all right they may now have to vote the stock which they own. It provides that the stockholders of any holding corporation shall each be entitled to cast his pro rata share of the stock holdings of such corporations. This appears to me, practically speaking, unworkable. I am inclined to think that nobody would want to fool with it. In its working out, the corporate owners

of stock would usually—for lack of time to bother with it—be deprived of the right to vote.

It has been my experience, in the practice that I had some years ago and on a few boards of directors, that it is almost impossible to get stockholders to come to meetings. It is common knowledge that stockholders are so inattentive, and even bondholders are so inattentive that they do not turn in their bonds when they mature. The stockholders themselves do not want to go to the corporation meetings, most of which is routine matter, anyway.

Then I come to what seems to me to be one of the most vicious things in this bill. Subdivision (j) of section 6 practically destroys the use of the proxy—which is the only means by which nonattending stockholders—the vast majority of whom have no desire to trouble themselves to vote in a stockholders' meeting—can make their votes effective. The appointment of some person as a "certified corporation representative" who is to have the sole right to act as proxy, strikes me as a fanciful measure—one that in common with other provisions of the bill would tend to destroy, on the one hand, some of the important rights of stockholders, and on the other, the responsibility of directors. With many corporations, it would deliver the complete control of the corporations into the hands of a Government-named official. Would this, or any other of the provisions I have mentioned—assist the several States in * * * enlarging purchasing power for goods sold * * *?

Senator O'MAHONEY. You misunderstand that provision if you think it deprives the stockholders of any right whatsoever. He may exercise his right as he chooses.

Mr. HART. He cannot give a proxy himself.

Senator O'MAHONEY. Certainly he can. He is the only one who can give it.

Mr. HART. Can he give a proxy to some other person?

Senator O'MAHONEY. Certainly.

Mr. HART. That does not make it as bad as it was.

Senator O'MAHONEY. As bad as it was? You mean as bad as you thought it was, do you not?

Mr. HART. Yes.

Senator AUSTIN. Where is that provision?

Senator O'MAHONEY. Page 13.

Senator AUSTIN. I do not find it on page 13.

Senator O'MAHONEY. Beginning in line 1:

That any stockholder of the licensee may deliver his proxy to any person.

He "may" deliver his proxy. He does not have to.

Senator AUSTIN. What is the use of that? There should be an exception there.

Senator O'MAHONEY. If it is not clear, we will make it as clear as the Senator desires.

Senator AUSTIN. It is not clear to me. That may be my fault.

Senator O'MAHONEY. No; it is my fault.

Senator AUSTIN. It is somewhat obscure to me. In another place the bill refers to that matter, and apparently there is no limitation in the scope of that attorney's power.

Senator O'MAHONEY. There is no scope in his power now.

Senator AUSTIN. He would appear before the commission. He would appear there in some relation, apparently, between the corporation and the Government. It is a very peculiar office, and apparently sets up new rules for the practice of law. I think the whole matter ought to be sifted some, if the purpose is, as stated, to merely create a privilege of having a certified representative at a stockholders' meeting.

Senator O'MAHONEY. That is all that is intended to do, and that is all it does.

Senator AUSTIN. I am glad to hear that.

Mr. HART. I think it should be amended. The right to give his proxy to this corporate representative should not be construed as depriving him of giving it to anybody else.

Senator O'MAHONEY. I would not hesitate to agree to that.

Mr. HART. This bureau would undoubtedly see to it that all proxies were sent to all stockholders of the corporation, naming so-and-so as the certified representative, and therefore many of the proxies would be sent to that individual. I say that in view of your pointing out that I have misconstrued it. It seems to me it is an unnecessary provision.

I have sat on a few boards of directors of moderate sized corporations. The feeling of the board was always that the responsible head are entitled to the benefits of the doubt; that they are entitled to the support of the directors as long as they are going right. Management has enough trouble to handle, without constantly having to scrap with various stockholders, if they are disposed to scrap, unless some vital issues are involved. After all, the directors are responsible, even under criminal penalties in certain cases. It seems to me that the whole idea, even in view of what you point out, is that it would mean in many cases a Government official sitting in and casting a vote, though he has no responsibility.

Senator O'MAHONEY. That is not intended to be a Government proxy.

Mr. HART. Subdivision (K) provides that—

The licensee shall be subject to, comply with, and accept any requirement not inconsistent with the laws of the United States that may be made by the State of its corporation, and any requirement that may be imposed by the Congress as a condition of its right to engage in commerce.

The effect of this would be to complete the subjection of the individual corporation to the ruling—nay, even to the whim of the regulating body.

Section 12 provides for the judicial review of any action or order of the Commission. But the right of review would not be available to any one of the many corporations of meager net resources—and there are multitudes of such corporations whose continued existence—without regard to whether they complied or failed to comply with an order of the Commission—would be vitally necessary to the continued employment of their employees. It is clear that such corporations, for lack of funds to appeal, must submit to orders when often their best interests might be served by opposing them.

The provision—

That the review by the court shall be limited to questions of law, and that findings of fact by the Commission, if supported by evidence, shall be conclusive, unless it shall clearly appear that the findings of the Commission are arbitrary or capricious

a provision which occurs, of course, in many statutes, would alone be enough to paralyze the activities of many of these corporations.

Senator AUSTIN. If you would put the word "the" before "evidence," you would have a different meaning.

Mr. HART. I think that would improve it. It seems to me that is one of many sweeping measures giving extraordinary power to this bureau.

Senator AUSTIN. That revives the iota rule and gives broad discretion to the Commission on the subject of what is evidence, does it not?

Mr. HART. Yes. There are certain kinds of statutes, like the workmen's compensation laws, where the question is whether a claim of \$10 or \$20 or \$50 or \$100 should be allowed, where it would not amount to so much, but this seems to be unlimited.

The Commission is authorized to require a licensee—

to submit accurate reports, truthful and responsible answers to interrogatories.

It—

may in its discretion make such investigations as it deems necessary to determine whether any corporation has violated any provision of this act or any condition of any license—

And so forth, and so forth. It—

is authorized in its discretion to investigate any facts, conditions, practices, or matters.

The Commission may compel the attendance of licensees, officers, agents—even their creditors—and the production of books and papers. Such attendance—

and the production of any such books and records may be required from any place in the United States at any designated place of hearing.

I submit that it has lately been a habit in America to belittle—even to attack—the business corporation as an institution. Yet without the business corporation—and, like other human institutions, corporations sometimes err—the American people could never have achieved their high standard of living. Life would not go on.

The greatest beneficiaries of corporations have been not the owners—greatly as some of them have benefited—but the public—the people. No low-priced automobile, radio, gasoline, fresh food for the people in our cities—few or none of the low-priced automobiles or articles of everyday necessity—would be available were it not for the business corporation. Individual efforts alone could not have done it. The partnership would have been wholly inadequate—unwieldy. Only the corporation could have done the job. The corporation is one of the greatest, most useful servants the people have. This bill would bind this servant hand and foot.

It seems to me that some in our legislative bodies have been misled by a fallacy. They seem to have gone on the theory that production of goods and services comes into existence, and expands, like an impersonal machine. A lead seems to have been borrowed from our Socialist friends, who contend that all that is needed in production is the workers, so-called technicians, and Government regulation.

But successful production and distribution do not work that way. They are born and they grow only through the careful planning, the hard thinking, and the untiring effort of the leaders in private enterprise. And most of these leaders work through corporations.

The purpose of this bill is clearly to control and regulate practically all corporations—with stated exceptions—of any size whatever. This control would in effect be limited only by the ambition of the bureau head under which the control was put—and I submit that with many bureau heads that ambition seems unlimited.

At the first hearing on an earlier draft of this bill, Senator O'Mahoney, in his very able opening statement (p. 45, pt. I, January 25, 1937) said this:

As I said at the opening, this bill is not intended, Senator Austin, to clothe the Federal Trade Commission with additional power to regulate business. I can say to you most emphatically that my own conviction is absolutely opposed to that, because it is not American, in the first place; and in the second place, because from the time of the creation of the Interstate Commerce Commission in 1887 down to this hour we have been trying to control business and monopolies and trusts in that way and have utterly failed, because it is physically impossible to expect any group of men to sit around a table and run the business of the United States.

Senator O'MAHONEY. Do you agree with that?

Mr. HART. I am in complete agreement with that; but it seems to me this bill would lead to the very regulation to which the chairman is opposed.

Senator O'MAHONEY. I hope you can be present when I testify.

Mr. HART. I should like to be. In section 1 the bill says:

It has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purpose of interstate commerce.

Senator BORAH. Do you claim there should be no regulation, but that we should permit them to run along?

Mr. HART. Yes.

Senator BORAH. What if the State of Delaware takes the harness off and lets them go as they have been?

Mr. HART. I think the thing to do is to let them run right along as they are, encouraging the States to improve their corporate laws. There are some very excellent corporation laws. The New York law is pretty good. Ohio is one of the best. One of the young men who testified in January about the corporation meeting commented on the improvement he had noticed and the raising of the standard. I believe that is constantly going on. But, after all, I think publicity is the best possible avenue of raising standards and morals. I believe that improvement could be greatly stimulated more than by compulsion.

Section 4 directs that each corporation board, as a condition of getting a license, must pass a resolution subjecting that corporation "to all acts of Congress regulating such commerce, or limiting or affecting the rights, powers, or duties," and so forth. The Commission may grant or refuse a license. "The licensee shall have only such powers as are incidental to the business in which it is authorized to engage." What does that mean? It must agree to be subject to "any requirement that may be imposed by the Congress as a condition of its right to engage in commerce." Full provision is made for investigations by "interrogatories" and otherwise from time to time. It writes a blank check and sends it to Washington, and the Federal Trade Commission, or whoever may be in charge, can fill in the rest of the check.

Senator O'MAHONEY. We write the blank check in Wilmington now.

Mr. HART. Oh, no.

Senator O'MAHONEY. Will you tell me why the State of Delaware or the legislature of that State should have the authority to create a corporation to engage in business in California?

Mr. HART. Because the State of Delaware is a sovereign State, 1 of the 48.

Senator O'MAHONEY. Has it any power to regulate commerce among the States?

Mr. HART. No.

Senator O'MAHONEY. When why does it have the power to create an instrumentality to engage in that commerce throughout the United States? You talk about blank checks.

Mr. HART. Senator, I think you are arguing for a theory, and that theory has an element of soundness in it.

Senator O'MAHONEY. Well, I thank you for the element.

Mr. HART. Your argument is very clear and effective. What I mean is that, after all, that provision of the Federal Constitution giving Congress the power to regulate commerce among the States has been there for 150 years, and for 150 years the Federal Government has utterly failed to take advantage of it, except in a certain class of corporations dealing with the Securities and Exchange Commission. It has committed itself to a policy. I think that is the gist of the whole matter. If you now tried to reverse it, that would throw confusion into business generally throughout the United States. I grant there have been some mistakes. No one can doubt that. We all know of a few cases, but I think they are very few.

When we entered the war in 1917 I recall the expression of surprise in Europe over the tremendous production of American private enterprise. So far as I can see, it did not call for any great natural resources. Look at Russia's natural resources. What has she been able to do? I am very strong for the freedom of American private enterprise, and I am afraid this bill strikes that down.

Senator O'MAHONEY. I am not willing to compare American standards with the standards of India, China, France, Germany, Italy, or England. I want to retain and foster and expand and raise the standards of the United States of America.

Mr. HART. So do we all.

Senator O'MAHONEY. Certainly.

Mr. HART. So do these business men.

Senator O'MAHONEY. These facts confront us, and I think no one can deny them: Before 1933 these enterprises of which you speak, the corporations to which you refer, had practically a free hand with the National Government. There was a steady increase in the number of unemployed in the United States, side by side with these great improvements of which you speak. There is no question about that. We all acknowledge and we are all proud of the achievements of American industry, but side by side with those achievements unemployment was steadily growing greater.

Mr. HART. Before when, sir?

Senator O'MAHONEY. Before 1933.

Mr. HART. From 1929 to 1933?

Senator O'MAHONEY. Yes. But 5 years before the crash people were talking about technological unemployment. Unemployment was an increasing problem. Now, since 1933 we have sought to solve that problem by Government action. I am satisfied that it cannot be

solved by Government action alone. I am satisfied that Government relief is only a stop-gap, and the only way to solve the problem of unemployment is to inspire private industry to such activity without restraint that the opportunity for reemployment will be given. I think as these hearings progress, it is becoming increasingly clear that one of the primary causes of unemployment is the monopolistic practices which are permissible under the Delaware corporate system.

Mr. HART. It is permissible.

Senator O'MAHONEY. It is not only permissible, but it is practiced.

Mr. HART. In many instances.

Senator O'MAHONEY. Oh, in innumerable instances.

Mr. HART. I read about half the testimony put in on the other side with some care, and the rest of it I looked through, I think enough to get the gist of it. I was struck by the generalities. Let me turn to it now. It was quite obvious that many of those people were very anxious to get this regulation. For instance, Mr. William Green, president of the American Federation of Labor, had something interesting to say. On page 93 of his testimony he says:

I am endeavoring to show that, because of an interstate character, its ramifications, that the time has arrived when the Federal Government should license these great corporations.

Then later on in his testimony, on page 98, he makes this statement:

What I am trying to do is to show the very great crying need at this time for Federal control of corporations.

It is obvious that he is greatly interested in the size of these corporations. Because they are so big, they ought to be regulated. In New York they regulate life-insurance companies, some of the greatest aggregations of capital in the world.

Senator BORAH. You did that after the break-down.

Mr. HART. No. I think that dates from the time of the Hughes investigation.

Senator BORAH. That is what I mean.

Mr. HART. I think they are doing it very well.

Senator O'MAHONEY. I want to call attention to a letter I received 2 or 3 days ago, which is typical of many letters which come to my office. It is on the letterhead of the Defiance Spark Plug Corporation, Toledo, Ohio, cable address Defiance-Toledo, Bentley's Code. It is dated February 24, 1938, and reads as follows:

DEAR SENATOR: I have read with a great deal of interest your activity in the matter of licensing corporations.

I am enclosing herewith copies of complaints made with the Federal Trade Commission against the Champion Spark Plug Co., and AC Spark Plug Co., to give you some idea of the necessity for some real control of these corporations.

I am also enclosing copy of our last statement showing a loss of a little less than a half million dollars in the last 4 years.

Then follows a copy of the complaints. Whether or not the statements contained in the complaints are true, I do not know and do not pretend to say; but I do want to call attention to this paragraph, exhibit 3:

Attached you will find three reports from O. A. Thomson, representing Defiance Spark Plug Corporation. We call special attention to the one dated January 4, 1937—

Subject: Northwest Motor Parts, Seattle, Wash. In this case, Champion finally concedes that the buyer could use AC with Champion, but not Defiance, and even threatened to withdraw their 32.5-cent price.

This purports to be an illustration of what the author of the letter, the head of this corporation, believes to be an unfair trade practice by which the opportunity of this particular corporation to engage in business is restricted.

Mr. HART. Would you think under this bill the Federal Trade Commission would create such a situation?

Senator O'MAHONEY. I cannot say. I have not read the whole complaint. I read this portion of it to illustrate that there are complaints coming from all sorts of businessmen of what they deem to be monopolistic practices by corporations. Senator Borah has been reading with considerable interest the testimony presented a day or so ago at the hearings before the unemployment committee. It seems to me very appropos to what Mr. Hart has been saying.

Mr. HART. I have a little moral—if I may go on.

Senator O'MAHONEY. Very well.

Mr. HART. I was in entire agreement with what you said, but it seems to me the sum and substance of what you read indicates the bill provides for a regulation which you say it should not provide. In view of the stringent provisions, which are probably only a beginning, is it not clear that this bill provides the very regulation you abhor? Was the Interstate Commerce Commission in 1887 more implemented with regulatory power than the Federal Trade Commission would be under this bill?

Senator O'MAHONEY. It was created, was it not? It was implemented afterward.

Mr. HART. Yes. If this is the start—and one of the witnesses on the other side said he hoped Congress would pass a bill that would be a beginning—it would be just a beginning and it would go on until it would be hard to say where it would end.

As I read the language of the bill, it sounds not like a statute drawn by the people's representatives for the fostering of the people's affairs. It sounds like an edict designed to put all industry in bondage. It spells the setting up of another huge bureaucracy under which corporate private enterprise would be wholly unworkable—would utterly bog down.

There are said to be seven or eight thousand different kinds of private enterprise in the United States. I do not know how many corporations would come under the scope of this bill, but certainly many tens of thousands. Conditions in all this gamut of activities are so varied—they change so from day to day—that any such regimentation as this bill sets up would not help but slow down the tempo of production and distribution, and I believe would lead to lower standards of living.

It is hard enough for the responsible managers of business to keep step with these changing conditions. It would be impossible for any regulating bureau to keep up with them. It could not effectively do its regulating job unless it had on its staff men of knowledge and experience comparable with the knowledge and experience of the responsible managers of all the corporations regulated. For the staff to acquire this knowledge and experience would require many years—if indeed it were ever possible. And the benefits derived could not possibly offset the loss of headway that the process of regulation would entail. It simply wouldn't be worth the cost.

Congress and the State legislatures have voted that so-called social security be extended to many of the workers of the country; and a great system of social insurance is now being attempted. But what about social insurance for the leaders of private enterprise, for all those tens of thousands of men to whom many millions of workers look for the steady payment of their weekly wage, to whom millions of unemployed must look—since there can be no other permanent relief—for the creation of additional jobs through future expansion? The responsible heads of the concerns that this bill would regulate need stimulus and encouragement. They ask no undue odds; they ask only the opportunity to make their plans and dispositions, in order that the greatest possible success may ensue. There must be freedom for these leaders if there is to be accomplishment.

I readily admit the necessary freedom involves freedom also for the handful of rascals that are found in industry and in every other walk of life. But as between the freedom that permits the rascality of the few and the careful bureaucratic regimentation of all industry, there can be no possible choice if what we want is production.

Government cannot regiment free men. It cannot even figuratively put the people's leaders in a straitjacket because of the errors of a few. You would not put an extra 40-pound burden on each of the men who hope to scale Mount Everest next May and expect them to succeed? Picture the oarsmen of an open boat in a storm at sea. The safety and welfare of all the occupants depend on them. Would you bind them? Would you give them minute commands for every motion they are to make? Would you not rather have them free; depend on their long experience as oarsmen; trust that their motive was to do their best? Would not that be the way most likely to get the best out of them? Would not that be the way to ride out the storm?

The most precious asset in our economic edifice is the imagination, the vision, the guts, if you please, of the leaders of private enterprise. Already, by statutes, Federal and State, restrictions and regulations have been placed on these leaders that tend to make their task a burden. The successful conduct of an enterprise today is beset with difficulties. The path is strewn with civil and criminal penalties for the violation of this or that law or regulation. Laws, many of them drawn by undisposed theorists, have already placed more regulation on these leaders, and on the enterprises for which they are responsible, that I believe will be found to be permanently advisable. I venture to predict that before we get far out of this depression, some of the existing legislation will have to be modified or repealed.

Not long ago a business man who had been successful and had made enough money so that he had a million dollars left, went to a New York City banker of my acquaintance with a plan to engage in a new venture. This venture would require most or all of his million dollars and he desired in addition a line of credit of half a million. If the venture were to start, 500 men would have been put to work immediately—another 500 within a year. The bank decided he was a good risk and told him he could have the credit he asked. My banker friend told me the day I happened to see him that the man had just called to say he had decided not to make the venture. He explained that while he had confidence in the success of the enterprise, yet it might not succeed. In that case he would lose all his money. And if success

came, it would be only after a struggle under the existing multitude of Government regulations; and a large part of the profit would be taken from him in taxes. He had concluded it wasn't worth the risk. Thus 500—perhaps a thousand—men failed to get jobs. I submit, sir, that it was, more than anything else, the minutiae of Government regulation and regimentation that kept those men out of their jobs. And I believe that throughout the United States incidents like this are happening every day.

Senator BORAH. What kind of business was he going to engage in?

Mr. HART. I do not know. It was a manufacturing business of some sort. I did not inquire. Mr. Chairman, too much has been made of the faults and errors of a few in private enterprise—far too little of the marvelous accomplishments of the great majority. Through listening to the propaganda about the few, we have been induced in this country to pass laws that have literally hamstrung the great majority. This pending bill, plausible as may be some of the arguments in its behalf, is certain to be just one more such law. Indeed, with its latent powers of mischief, it would be one of the worst. For to paraphrase John Marshall, the power to license is the power to destroy.

Senator BORAH. When and where did John Marshall say that?

Mr. HART. In one of his opinions.

Senator BORAH. I have always understood that he said "The power to tax is the power to destroy."

Mr. HART. Yes; but I said "to paraphrase John Marshall."

Senator BORAH. It is quite a paraphrase.

Mr. HART. I think it is pretty good.

Senator BORAH. It may be, but it has no application to this bill.

Mr. HART. I believe that this Senate is the greatest hope of freedom in the United States today. I believe that the sincerity of every man on this committee is as deep as I would claim my own to be. And in this spirit, I urge you gentlemen to lay aside this bill. Or pass it, in order to remedy the evils you have in mind, would be like taking down the fire engine for minor repairs, instead of going to the fire.

The overwhelming problem in America today is to get men back to work. They can work permanently in only one field, and that is private enterprise. Free private enterprise is all that lies between the people and utter chaos. It stands today nonplussed, disheartened, discouraged. The Senate of the United States last summer brought it the encouragement of defeating the Supreme Court bill. Give it the encouragement, I beg you, of withholding this bill also.

Senator BORAH. Are you of the opinion that there are some rascals in business?

Mr. HART. Yes.

Senator BORAH. Of course, you think there are comparatively few?

Mr. HART. Yes.

Senator BORAH. I am not questioning you on that ground, but there are a good many corporations in this country which have sufficient power to fix prices on practically everything the human family has to use in order to live.

Mr. HART. They may have the legal power, but with competition as it is they do not have the economic power. If they did, the bottom would drop out of their business.

Senator BORAH. I think it dropped out in 1929, for that reason.

Mr. HART. It has dropped very recently. Let me give you an instance of what happened in up-State New York last spring. Under the influence of the C. I. O. two successive wage increases of 10 percent were made in a certain industry. From the moment those were made that business, which was doing business on a close margin, had to raise the prices, and its orders began to fall off. Within 6 months they had laid off half the men and the others were working half time. That was in August before the depression started. It never would have raised prices otherwise, because it knew it could not continue if it did. The law of diminishing return is very well understood by businessmen today. If they do not understand it at first, many of them learn by experience.

Senator BORAH. Prof. Paul E. Douglas, of Northwestern University, in testifying before the Committee on Unemployment and Relief, said:

I regard the monopoly fixation of prices as a major cause both of the present recession and of the 1929 depression. There is little doubt about the fact of monopoly control of prices over large areas of business. In a few industries, such as aluminum, one firm controls virtually the entire product and hence is able to set prices more or less by itself.

Then he cites a number of instances. Now, in 1929 we had the situation that you desire to have. The corporations were not being interfered with by the Federal Government. We had no depression. We had comparatively low taxes. Yet at that time there came upon us a crash. Fifty percent of the people of the United States in 1928 and 1929, at the time we were the largest producer of wealth in the world, were living on less than the bare necessities of life. In my opinion, that arose out of the fact that these corporations had power to fix prices which drained away from the people all of their savings which might have made possible a reasonable existence. One-third of our people had nothing to fall back on. They were living on the bare necessities of life. If Professor Douglas is correct, it was by reason of monopolistic power to control prices that caused that situation.

Mr. HART. I do not think I would agree with Professor Douglas. Might I say, in commenting upon what you just said, taking the proportion of people in this country who own their own houses, which I think is about half, and the proportion who own their own farms and 10 or 12 million individuals who are stockholders in corporations, there are in addition some 42 million savings bank depositors.

Senator BORAH. The depositors in the savings banks are people who have incomes of seven or eight thousand dollars a year, not the poor people.

Mr. HART. I have some figures I would be glad to submit to you on that.

Senator BORAH. We can get the figures from the Brookings Institution. They furnished us with some figures. They are always cited as evidence of prosperity of the people.

Mr. HART. There are 42 million of those accounts. There certainly are not 42 million people with incomes of \$38,000 a year.

Senator BORAH. The Brookings Institution furnished figures showing that these savings-banks deposits were made by people with over \$8,000 a year.

Mr. HART. The deposits are limited to not more than \$5,000.

Senator BORAH. Of course, they did not put in the entire \$8,000.

Mr. HART. I go into savings banks frequently, and I see very few who look like \$8,000 people. Certainly, in the city I come from they are people in the lower walks of life.

Senator BORAH. I have this Brookings matter in the record.

Mr. HART. I will be glad to have it done.

I should like to call your attention to this pamphlet issued by the Department of Commerce on the national income in the United States from 1929 to 1935. There is a chart set forth on page 99 which throws some light on this subject. It shows the proportion of the income paid out by the manufacturing corporations of the country that goes to labor, including with labor the salaries of the white-collared workers and officers. The total proportion of all the income so paid out in 1934 was 84 percent. That amount went to labor, including those getting salaries, leaving 16 percent for interest and dividends and other items that are not included. I think a study of that chart would be interesting.

Senator O'MAHONEY. We will incorporate that into the record.

Senator BORAH. Professor Douglas also says:

In other industries, we find one or two companies exercising a dominant control over output with the result that other firms follow their lead in the matter of prices. Agricultural machinery, electrical machinery and equipment, heavy chemicals, cement, and certain branches of the iron and steel industry fall for example within this group. Then there are more loosely organized industries which have their trade associations. Here amidst the haze of cigar smoke, manufacturers and dealers commonly reach understandings about prices, and despite all difficulties of enforcement, tend to fix them at higher levels than would prevail under perfect competition.

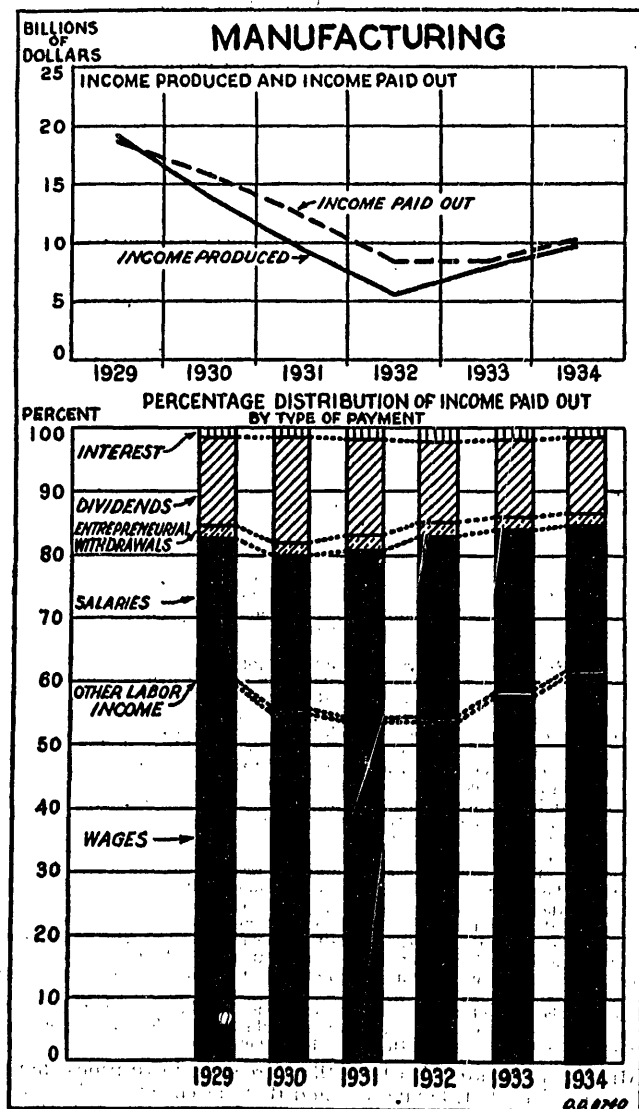
I know the defense which is made for both open-price arrangements and the so-called basing-point system. The experience which I had as a member of the Consumers Advisory Board of the N. R. A. convinced me, however, that in the majority of cases the open-price agreements were used as enforcing devices to prevent a given manufacturer from selling at less than a previously agreed price and that if he tried to do so he would be threatened with reprisals. The basing-point system can also be used as a means of fixing prices and is commonly an evidence of a lack of competition in establishing prices.

Finally, we have a wide variety of trade-marked and branded goods, the retail prices of which are fixed by the manufacturers and on which price-cutting is forbidden, I believe, by over 40 State laws.

I am sorry to say that these tendencies have been increased in the last few years. The farmers of this country became properly resentful at the way prices of the goods they bought were boosted by the city monopolies and by the protective tariff while they were forced to sell in a competitive market. Instead, however, of adopting the long-run policy of restoring competition to urban industry and hence reducing the prices of the goods they bought, they sought immediate and short-run relief by asking that the Government extend the monopoly system to agriculture and by a general limitation of output to raise the prices of the goods they sold.

I do not blame the farmers. I think that once you have the monopoly system it was inevitable that these other things would follow. The monopoly system would inevitably bring about the control of other markets.

Mr. HART. Senator, I believe there are some institutions that may be fixing prices, but, having in mind that statement by the National Industrial Conference Board that the average return of the business corporations in 1929 was 5.4 percent, and having in mind that over a



period of 15 years the average return had been only 3 percent, we do not think, sir, that the monopolistic practices that exist would be reflected in that result.

Senator BORAH. If monopolies are fixing prices for 130 million on a particular product, the return might seem small in percentage, but would be tremendous in final result.

Mr. HART. I wonder if that monopoly is so widespread. I think that in certain industries—and I know of one particular concern with certain small competitors—that if they started out to fix prices themselves, if the large companies started out to fix prices, what would the little fellows do? They could not afford to fix lower prices, because their costs are higher than those of the big fellows. They might be wiped out. You would not expect them to charge more, unless they had to. Certainly, the natural thing to do is to follow along. You would not forbid that by law?

Senator BORAH. No; but I would forbid the power to fix prices in the first instance by the monopolies, because the small man must come up to those prices.

Mr. HART. I do not think the large manufacturers or concerns are necessarily monopolies. It is the leading factor in the industry.

Senator BORAH. If it has the power to fix those prices and compel the small manufacturer to adopt them, that makes it a practical monopoly.

Mr. HART. I cannot see that. It seems to me it is a natural working out.

Senator BORAH. But suppose a very large corporation engaged in a particular industry fixes the price of its product which it disposes of to the public that it would be in absolute control of the market, and is strong enough to establish a price at which it can afford to sell, that would bring all the small dealers up to that price.

Mr. HART. Is not that a sound—a defensible exercise of business judgment, having in mind the desirability of the whole country that corporations may remain solvent?

Senator BORAH. That depends on how much power they use in fixing prices.

Mr. HART. That is the power you would forbid.

Senator O'MAHONEY. As I understand you, you judge everything by the results?

Mr. HART. Yes.

Senator O'MAHONEY. Did I correctly understand you to say, before Senator Borah began to interrogate you, that the standards of the individuals living in the United States have been raised, and that there is less poverty than there used to be?

Mr. HART. I intended to say so. I do not know that I did, but I say it now.

Senator O'MAHONEY. I was very much interested in that statement. I find in the figures of the United States Census Bureau, for example, that the proportion of tenant farmers has been steadily increasing during the past 50 years, and that the proportion of persons who are dependent upon jobs rather than upon the land has been steadily increasing. The result is expressed in the figures to which Senator Borah referred from the Brookings Institute. That group made a study of the whole problem in the United States some years

ago, a factual study of production and consumption: It demonstrated that in 1929, before the crash came, there were 6,000,000 families in the United States compelled to live on less than \$1,000 a year—6,000,000 families, not individuals. That is to say, 6,000,000 families had to be supported on less than \$25 a week. Perhaps that does not sound so very bad when we consider that 50 or 70 years ago \$25 a week may have been a pretty good wage; but when we take those figures into consideration at the present time, we find that the transfer of our economic life from the land to industry has brought about a decided condition of unemployment.

Now, with respect to the effect of monopolistic practices, I think I pointed out a few days ago that these same figures of the Census Bureau show that in 1904 there were approximately 238,000 manufacturing establishments in the United States, corporations, partnerships, and individuals. At that time the population of the United States was approximately 88,000,000. In 1929 the population had increased to about 125,000,000, an increase of 50 percent. We would naturally assume that more establishments would be required to supply that vastly increased population.

Mr. HART. More manufacturing establishments?

Senator O'MAHONEY. Yes; the fact is there were less in 1929. There were only 216,000 manufacturing establishments in 1929.

Mr. HART. I would not think it would follow that there would naturally be more such establishments. There were not more railroads. There are probably less railroads now.

Senator O'MAHONEY. There are very many more miles of railroads.

Mr. HART. Yes; but that is different.

Senator O'MAHONEY. That illustrates exactly the point. There has been built up a concentration of the ownership of industry, just as there has been built up a concentration of the ownership of transportation. That concentration of the ownership of industry, trade, and commerce has produced a concentration of governmental control. The one has to follow the other inevitably, because the people of the United States have not been content to turn over their economic destinies to private industry to operate under charters which were issued by States over which those people exercised no control.

You said a moment ago that the legislatures of the States were closer to the people than the Congress of the United States. You did not mean to tell this committee, did you, that the Legislature of the State of Delaware knows more about the problems of the United States than does the Congress of the United States? You did not mean to tell us that the Legislature of the State of Delaware should be authorized to speak for all the people of the United States; that the Legislature of the State of Delaware, for the purpose of inviting incorporators to come there to obtain their charters, in order that the State might increase its income from the fees, would have the right to set loose upon the entire country organizations which were organized without any restriction whatever? You speak of a corporation as the creature of the Government. Is it anything else but a creature of the Government?

Mr. HART. Yes; I would say so.

Senator O'MAHONEY. When is the corporation anything but a creature of the Government?

Mr. HART. Well, take the telephone company. That is certainly more than a creature of the Government.

Senator O'MAHONEY. What brings it into existence?

Mr. HART. I think we are long past that. Of course, it was a legislative act.

Senator O'MAHONEY. I do not think we are long past that. New corporations could be created tomorrow.

Mr. HART. I mean the corporations have been with us so long and become so much a part of our life that we are not going to attack them now.

Senator O'MAHONEY. Certainly not. I am not attacking corporations. That is not the principle upon which I am operating. Now, since it must be acknowledged that no corporation exists except by the act of Government, then when the Government creates a corporation it invests private industry with a certain amount of public authority. It necessarily follows that since that industrial or control problem is a national problem, the national authority must define the power and responsibility of the corporation.

I have no hesitancy in saying to you or to anybody else that, so long as we enable States, which have neither the power nor the desire to regulate interstate commerce, to create the instrumentalities by which it is carried on, you cannot avoid the expansion of the governmental bureaucracy in Washington; but that if, on the other hand, you recognize the fundamental fact that if corporations are created by Government, and then take the next logical step, which is that the Government which has jurisdiction over the field of commerce in which corporations are engaged shall define their powers, then and then only will organized business be free from Government regulation.

There may be errors in this bill. It is not possible to draw a measure of such importance as this and have it spring perfect from the hands of the draftsmen. But from the study over and over again by Senator Borah, from the quotation from my statement which has been by you and other witnesses, it seems to me we ought to come to an understanding that primarily what we are trying to do is to establish a method whereby we can prevent abuses before they take place, instead of continuing as we have been continuing the hopeless prospect of punishing abuses after they have been committed.

I am sorry to have taken up so much of your time.

Mr. HART. It has been most interesting. You are approaching this from the standpoint of government. I cannot approach it from the standpoint of government. I approach it from the standpoint of the citizen, the average corporation. We have been permitting for 150 years the regulation of corporations by States.

Senator O'MAHONEY. We do not have regulation by States. According to a letter I received from the Federal Reserve Board the other day, in response to my inquiry, more than 30 percent of all the bank deposits in the United States are in New York and Chicago. That means a concentration of industry. It means that in Idaho, Wyoming, California, the Rocky Mountain region, the South, it is impossible for small-business men to finance their enterprises without going to the financial centers in New York and Chicago to obtain permission to do so. It seems to me that concentration of government is no worse than concentration of economic control. What difference does it make to a small-business man whether he is crushed by

government or by concentrated private monopoly operating under a State charter? I think we ought to find a way by which we shall have neither monopoly nor government interference.

Senator AUSTIN. Let us get the idea of the witness. Before we get too far away from a certain point I would like to ask a question.

Senator O'MAHONEY. Senator Austin, you have a free field.

Senator AUSTIN. Not quite. I just want to get this in the record so that it may be associated with the testimony he has given.

Your attention was called to the price-fixing system referred to by Professor Douglas, called the basing point system. I am assuming that the basing point system is an attempt to eliminate geographical points as substantial elements of competition. I assume further that it is a fact in our economic system and ought to be eliminated. We are confronted with that identical situation in section 7 of this bill, which provides that if anybody has a competitive advantage on account of his geographical position he has got to come under, whether he has a license or not. Does not the bill attempt to eliminate competition or the advantage of competition that rests in the locality or geographical position?

Mr. HART. I think so.

Senator AUSTIN. If you succeed in doing so, what have you done to the people who live in that locality and who would ordinarily be entitled to the benefit of the locality?

Mr. HART. You put them under government control.

Senator AUSTIN. Here is another thing. In the statement by our learned chairman that he made comparing some figures, he stated some figures of a long time ago and compared them with figures in 1929. I want to ask you if you took into consideration the basis of those figures? That is to say, that the figures of earlier times reflected all manufacturing establishments whereas the figures of 1929 were only those that value of products in excess of \$5,000, according to the Bureau of Census reports.

Mr. HART. I am not familiar with that. I heard something about it.

Senator AUSTIN. If the census report establishes what I have assumed in my question, there has been a comparison of two different figures applying to different things.

Mr. HART. Yes. I recall that method of treating them.

Senator AUSTIN. That is all I care to ask; Mr. Chairman.

Mr. HART. Might I say, Mr. Chairman, in reference to what you said about the concentration of bank deposits in the large financial centers, that if the need is in the country it could be used. The banks would certainly put it to work there, because they could get more for it than they could in New York City.

Senator BORAH. Is it not true that in 1928 and 1929 the money was sent to the large financial centers for the purpose of speculation?

Mr. HART. There is no question about that. Everybody was crazy.

Senator BORAH. The farmers and legitimate industries did not get money because of that condition.

Mr. HART. You would have to indict the whole country.

Senator BORAH. We certainly ought to have some way by which we can control those things which are essential to the industrial welfare of the citizens. When you turn the money over to a few people to

enable them to use it for speculation on the market, while the industries and producers are starving for the want of money, you have a condition that certainly somebody should control.

Mr. HART. Nobody in New York or Chicago had the power to demand that money be sent there. It was the people in those sections that insisted upon it going there. There is no doubt about that.

Senator BORAH. The farmers and producers who wanted money to run their farms found that it had been sent to New York and they could not get it.

Mr. HART. They could not get loans if they needed them?

Senator BORAH. Certainly not.

Mr. HART. Most of the banks I know would give anything if they could place more money out at reasonable interest.

Mr. Chairman, in regard to this whole situation, Senator Austin spoke of the basing point system. I have nothing to say for or against it. I do not know much about it. But if you are going to upset the arrangements that have been evolved for the making and marketing of goods, you are going to find yourself saddled with the responsibility for setting entirely new substitutes for these instrumentalities right here in Washington. If we are going to do that in Washington, enter into the details of handling those innumerable enterprises, we are going to become like France, where you cannot do anything in the Provinces unless you get permission from Paris. I have had some experience with that over there.

Senator BORAH. Let me ask you the question which Senator O'Mahoney asked. You say we would have to come to Washington. As it stands now, you had to go to Wilmington.

Mr. HART. I do not agree with that. Corporations are chartered by various States.

Senator BORAH. When you come to enumerate the corporations doing business throughout the United States that have charters issued by the State of Delaware, you will find the number is surprisingly large, and that the people must go to Wilmington.

Mr. HART. You mean to get their charter, but not for detailed instructions?

Senator BORAH. And to get relief against the corporations.

Mr. HART. The stockholders would have to go to Wilmington?

Senator BORAH. Yes; and businessmen who do business with that corporation, who do business with corporations which owe their existence to the State of Delaware.

Mr. HART. That is true.

Senator O'MAHONEY. The State of Delaware is the State which now gives the blank check to those who wish to form corporations, with the power to determine the extent of their business?

Mr. HART. At the moment, I would say yes.

Senator O'MAHONEY. Do you not think it is worth while stopping that?

Mr. HART. I would not stop it. I think conditions are improving. They can be accelerated some. If you think the country would like to come to Washington for all these things, then we would have the entire country coming under this act.

Senator AUSTIN. The Federal Government has done its share of creating these corporations, has it not?

Mr. HART. Yes.

Senator O'MAHONEY. I do not defend that for a minute.

Senator BORAH. They did not do it with my consent.

Senator O'MAHONEY. Nor with mine.

Senator BORAH. Mr. Chairman, I ask leave to have the reporter copy in the record certain portions of the statement of Dr. Paul E. Douglas, professor of economics, University of Chicago, before the Special Committee to Investigate Unemployment and Relief. I have marked in the transcript the portions I desire in the record.

Senator O'MAHONEY. It may be incorporated in the record.

(The matter referred to is here set forth in full, as follows):

Dr. DOUGLAS. Very briefly, I regard the monopoly fixation of prices as a major cause both of the present recession and of the 1929 depression. There is little doubt about the fact of monopoly control of prices over large areas of business. In a few industries, such as aluminum, one firm controls virtually the entire product and hence is able to set prices more or less by itself.

In other industries, we find one or two companies exercising a dominant control over output with the result that other firms follow their lead in the matter of prices. Agricultural machinery, electrical machinery and equipment, heavy chemicals, cement, and certain branches of the iron and steel industry fall, for example, within this group. Then there are more loosely organized industries which have their trade associations. Here amidst the haze of cigar smoke, manufacturers and dealers commonly reach understandings about prices, and despite all difficulties of enforcement, tend to fix them at higher levels than would prevail under perfect competition. It may be well to remember in this connection the shrewd remark of Adam Smith some 160 years ago when he wrote, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices."

I know the defense which is made for both open-price arrangements and the so-called basing point system. The experience which I had as a member of the Consumers Advisory Board of the N. R. A. convinced me however that in the majority of cases the open-price agreements were used as enforcing devices to prevent a given manufacturer from selling at less than a previously agreed price and that, if he tried to do so, he would be threatened with reprisals. The basing point system can also be used as a means of fixing prices and is commonly an evidence of a lack of competition in establishing prices.

Finally we have a wide variety of trade-marked and branded goods, the retail prices of which are fixed by the manufacturers and on which price cutting is forbidden, I believe, by over 40 State laws and by the Tydings "rider" of last summer.

I am sorry to say that these tendencies have been increased in the last few years. The farmers of this country became properly resentful at the way the prices of the goods they bought were boosted by the city monopolies and by the protective tariff while they were forced to sell in a competitive market. Instead, however, of adopting the long-run policy of restoring competition to urban industry and hence reducing the prices of the goods they bought, they sought immediate and short-run relief by asking that the Government extend the monopoly system to agriculture and by a general limitation of output to raise the prices of the goods they sold.

I don't blame the farmers. I think that once you had the monopoly system and the protective tariff for manufacturing, and as long as the country was not willing to reduce the tariff or break up the price agreements in the cities that the farmers were forced into it, but I think it would have been better for a long-run policy, though difficult in the short-run, had an attempt been made to enforce competition for the cities rather than extend monopoly to the countryside.

But now you may ask, What has all this to do with the depression? Simply this: By the boosting of unit prices, the sum of the price tags on the mass-production goods has been made greater than the total monetary purchasing power available in the pockets of the consumers for these goods. The result is that as long as these prices are maintained and the monetary income of the consumers is not increased, there is not enough monetary purchasing power to buy the actual or potential output of American industry and agriculture at the prices charged.

If these prices are rigidly maintained, the only result can be unemployment. The failure of industry to absorb more than half of the unemployed in its upward

swing from the spring of 1933 to the summer of 1937 was largely due, I believe, to these ceilings which were placed on production and which consequently checked consumption and prevented full reemployment. The downward movement of production in the last 6 months has been largely caused by the same factor. I know that there will be some who will question this point of view and who will insist that it is impossible for a disparity to exist between total consuming power and total prices charged. The monopoly profits, this group will insist, will go into the hands of the owners of industry and will be spent by them so that all that is paid in prices will ultimately flow back to the market in purchasing power. This contention has however a vital flaw. The monopoly profits, however, because of the relative concentration of ownership, go to a comparatively small fraction of the total population. They are either (a) spent on luxuries, which will give employment to labor although not devoted to the most social productive purposes, and (b) saved.

If these savings are invested in industry, they will also of course give employment to labor. But after a time will the monopoly industries want more buildings and machinery? The ultimate consumers of the mass-production industries are the wage-earners, white-collared workers, and the farming population. The wealthy invest in mass production industry but do not consume much of its products. In view of this fact, if the monopoly prices are so maintained as to limit the consumption of these goods by the masses, it is obvious that after a time, industry will not want more machines, etc. For in restricting consumption, it will also be restricting production and this in time will cause a decrease in the demand for capital goods. This will throw men out of employment and help to precipitate a recession.

But a recession once started has cumulative effects. Men thrown out of work buy less and hence cause trade and industry to produce and sell still less which throws more men out of work, and so on. There are many ways in which a recession can thus grow into a depression to the harm of all. In view of this, the natural question arises, why should not monopolies, big business, and the trade associations generally see this fact and avoid collective disaster by reducing their prices to bring them within the range of the consumer's pocketbook. This would stimulate demand, production, and employment as Professor Hansen has well said, and increase the national income of goods and services.

There are, I believe, three factors which are preventing this. The first is the obsession which so many business men and even some union leaders entertain concerning unit prices. There is a common tendency for these men to think an industry is stabilized if it can maintain its prices, or its rate of wages, even though this results in greatly reduced production and employment and in a very much reduced total income. If men would think more in terms of total profits, or total annual earnings, they would see that in many cases greater gains could be obtained through lower prices, and in all fairness I should add in some cases, although not in all by any means, through lower hourly wage rates as well.

Senator BORAH. I also ask that the reporter copy in the record certain portions which I have marked in the transcript of the statement of Robert W. Irwin, president of the Robert W. Irwin Co., manufacturer of furniture, Grand Rapids, Mich.

Senator O'MAHONEY. That may be incorporated in the record.
(The matter referred to is here set forth in full, as follows:)

There is still an acknowledged shortage of homes. Why was building in this field, which had such a fine start a year ago, checked? I believe it is generally conceded that there was too rapid advance in costs—advances which did not eventuate under the rule of free competition. I assume that the committee has full statistical information in reference to these advances. I have, however, a chart in relation to building costs prepared by the Engineering News Record, which I understand is a recognized standard authority, that I will be glad to put into evidence if it is desired.

The new legislation for a more liberalized credit for home building may help some, but I warn you that there will be no great increase in building until there is a confidence in prices—a confidence that they are being fixed both for material and labor, by the laws of supply and demand and not by monopolistic power or Government edict.

No man who has \$1,000 saved is going to borrow \$9,000 and put it into a home unless he has confidence that the cost factors are in no way controlled by monopolistic powers.

In other words, we will not have normal investment of such funds unless there is a confidence in the price structure. It is not a question of whether prices are high or low as measured in dollars. There was never a time in the history of this country when prices were as high in dollars as they were in the period immediately preceding 1929, but there never was a time in our history when industrial prices were as low, measured in terms of what a day's work would exchange for in material things.

I therefore feel that one of the prerequisites of normal activity and full employment is the eradication of any and all factors that may be artificially sustaining prices or costs of commodities.

The one and only factor, aside from price-fixing legislation, that is interfering with prices being fixed by the rule of free competition is the abnormal development of monopolistic powers in this country during particularly recent years.

I have observed more evidence of what looks like violation of the Sherman law during the past 3 years than any time in my business career, which goes back nearly 50 years. There is evidence on all hands that there are price agreements which are effective. I do not say that I can produce legal evidence supporting this statement, but I have with me a few examples which I believe go to substantiate what I say.

The Sherman law is not archaic. It lays down the only true basis upon which free enterprise can be protected. Business can successfully operate with this law strictly enforced. Its enforcement is, in my judgment, as necessary to the protection of society as the enforcement of the law against counterfeiting, and it should be enforced in the same vigorous manner in which that law is being prosecuted.

Senator AUSTIN. Mr. Chairman, I ask to have included in the record an article written by Matthew Woll, first vice president of the American Federation of Labor, which does not relate directly to this bill, but deals with the same general subject matter. I offered this on the floor of the Senate and asked that it be referred to this committee. I now ask to have it included in the record.

Senator O'MAHONEY. It may be incorporated in the record.

(The matter referred to is here set forth in full, as follows:)

At its recent meeting in Miami, Fla., the executive council of the American Federation of Labor called upon Congress to repeal or modify the undivided profits and capital gains taxes "as a step toward the restoration of public confidence on the part of those who allege they are inspired by fear and distrust."

To many people it may seem strange that in these days when attacks on business and industry find such a ready response leaders of nearly 4,000,000 wage earners should call upon the Government to repeal or modify a tax on "undivided profits." If a corporation has earned what are apparently excessive profits—profits which it does not have to pass on to its stockholders to keep them satisfied—why should organized labor object if the Federal Government takes a large portion of them away in the form of taxes to be used for, say, relief?

To find the answer to this question two guiding principles which have always been at the foundation of the American labor movement must be thoroughly understood. The first is a firm belief in our present system—the system of individual initiative and private enterprise with its profit motive, always however with the understanding that labor must receive its fair share of the profits of production and distribution and that the consumers shall benefit likewise in the form of reduced prices.

The second is that the American worker does not want to be supported by governmental relief payments any more than he desires to be supported by his neighbors, organized charity or by standing in a bread line. What he wants is an honest job in private industry with wages, hours, and working conditions which will give him and his family the standard of living to which he is entitled. To obtain these he knows that industry must be encouraged by government and not penalized simply because it happens to be successful. He knows that it must continue to grow and expand if he is to be secure in his job and grow with it.

Relief we must have regardless of the cost when people are out of work and they and their families are hungry. But relief makes no contribution to the solution of the unemployment problem.

Our experience during the past 5 years has proven conclusively that Government spending can only supply temporary relief. There has been a steady

increase in unemployment since last September with scores of thousands of workers laid off in mass production, textile, manufacturing, transportation and mining industries. The spending of vast sums in relief payments, no matter how necessary they may be, will not restore to the workers their jobs in those industries. As the executive council of the American Federation of Labor has well stated:

"The real remedy for unemployment is the creation and maintenance of work opportunities for working men and women in private industry."

How can this best be accomplished?

First, by immediate steps toward the restoration of public confidence in private industry and at the same time create cooperation and understanding between those who own and manage industry, labor, and the Government.

It is of first importance that we create and maintain a friendly and cooperative relationship between industry and labor. This relationship should be brought about not by legal fiat but by a Governmental policy that begets the confidence and good will of both. Labor suffers quite as much from Governmental control over its relationship to industry as does industry itself. You cannot well regulate the one without at the same time affecting the rights and interest of the other. Failure on the part of Government to adhere to this principle is no less harmful to labor than has been the disregard of this principle by industry when it was in the saddle.

Labor and industry have cause for a common effort in protecting each other against autocratic usurpation of power over their destiny by Governmental agency. It makes little difference if such usurpation is exercised by the National Labor Relations Board or any board proposed or designed to fix the wages of labor's hire and the conditions under which both industry and labor shall function side by side. Unless both are alert and join in a common cause for defense against such aggressions we may find later that the time is past in which to retrace our steps. Movements, erroneous or otherwise, once begun generally gain in momentum and when headed at full speed it is almost impossible to put them in reverse without serious consequences.

Second, there is grave doubt regarding the rapidity and extent to which Government has entered into competition with private enterprise. We may seriously question whether there should be further extension of Government into our economic life. Undue extension as well as undue interference with industry by Government creates unrest in the ranks of both capital and labor, destroys confidence and if it does not actually create unemployment it checks any increase in the opportunities for employment. By this is not meant that business should not be regulated by certain forms of restrictive legislation. Labor has repeatedly said over and over again and it is repeated here for the sake of emphasis that:

"Natural monopolies such as the public utilities and the railroads must be regulated with a firm hand in the interests of the public, the security holders and the workers in these enterprises. Insurance companies must be regulated in the interests of their policyholders for whom, after all, they act in a purely fiduciary capacity. Banks must be regulated in the interest of their depositors, their stockholders and their customers for credit alike. Sanitary laws controlling the processing and distribution of food; various health measures and protective laws against unnecessary, unusual hazards; laws against misrepresentation, fraud, and unfair competition; laws prohibiting child labor and laws relating to minimum wages and maximum hours of work; these are all necessary and proper in the interest of the public as a whole."

But when labor states that it wants to see a very definite check placed on undue Government interference in business it means the rapidly growing tendency to compete with its own citizens which, if carried out to its logical conclusion, must eventually lead to political ownership and operation of all of the processes of production and distribution.

In other words, labor no less than industry demands that every sound private enterprise which has economic and social utility shall be allowed to function and not be stifled or be destroyed by governmental competition or by governmental fiat, whether expressed through its taxing power, restrictive legislation, or through discrimination. Unless industry is allowed the opportunity to make reasonable profits, collective bargaining will be rendered useless and be of no avail.

Third, the seemingly never ending campaign of propaganda of governmental officials big and little as well as by all sorts of governmental bureaus and agencies designed to discredit all business and industry can result only in injuring labor as well as industry.

This harmful and destructive propaganda should therefore cease. American industry is now in a state of convalescence. It needs no severe nostrums. It needs the encouragement of common sense. It needs the joint effort of labor, of management, of capital, of consumers, of all citizens and above all else that of the Government. After all, the Government depends upon agriculture, industry and commerce—and so does labor and vice versa.

Fourth, there should be a complete revision of our tax laws. Taxes provide the greatest single contribution to the cost of living today. It makes no difference whether these taxes are paid in the first instance by big business, industry, the public utilities, the railroads, the banks, or the insurance companies, it is the ultimate consumer who pays them in the end.

We must be sure that our method of levying taxes is not designed to favor any particular group. It is of utmost importance that we insure an equitable distribution of the cost of government, so as not to restrict unduly the production and equitable distribution of wealth in the interest of all. While it is unsound for business to retain earnings not needed, in an economic sense, the difficulty of providing for all the varied conditions that arise suggests the elimination or the modification of the tax on undistributed earnings. Certainly some reasonable percentage should be definitely allowed to provide for future needs, without penalty. While the burden on smaller units of business may, at the moment, be more generally recognized, the burden on the larger units will be recognized in a far more spectacular and disastrous degree as industry passes into the next period of adversity.

Then, too, where the Government imposes a tax that tends to freeze the natural flow of capital from one place to another, resulting in too high values in some cases, and too low values in others, paralyzing to an important degree, what ought to be a free flow and unrestricted movement of capital, both into and within the security markets, we will have set at work influences adversely affecting industry's ability to perform and certainly render it unable to expand.

There is abroad the general belief and conviction that the tax policy of the Government, coupled with its apparent attitude toward industry, is preventing the normal expansion of American industry. It is the common belief that undue and unjust taxes are keeping billions of dollars of idle capital lying in the banks of the country because capital is afraid to take excursions into new enterprises or to assist in the expansion of old ones.

Of all forms of taxes it is quite probable that the undivided profits and capital gains taxes in their present form have been the greatest factor contributing to unemployment which is still at its peak. But, will say our legislators, seeking new sources of revenue, these taxes are popular with the mass of the people, they are easy to collect and they provide large sums with which to continue the payment of relief. If we repeal or modify them what will we do for money?

There is one answer which seems to me to be a very simple one. It has been truly said that the power to tax is the power to destroy. Likewise this power to tax may be used for constructive and beneficial purposes. Why not use the power to tax as a power to construct in such a way as to take the unemployed off the relief rolls and put the workers back into honest jobs where they would much prefer to be?

In other words would it not be well to stop penalizing business and industry for being successful in the past and reward them through the agency of the power to tax for returning to that success? This sounds like a paradox but it can be done.

Suppose the Government should say to industry something like this: "Whenever and wherever you can show that you have spent capital whether it be undivided profits, capital gains, or new capital invested, or borrowed for expansion of your business, the replacement of obsolete machinery, or in any other way which provides additional employment somewhere along the line of production and distribution the Government will credit you on the basis of the depreciated amount on your tax bill."

This procedure would seem highly desirable not alone because of its incentive to greater employment of labor but because of the vital need of lower selling prices as well. Then, too, it would encourage the capital goods industry that so frequently lags behind. Isn't it conceivable that industry would much prefer to employ this money in increased production than to turn it over to the Government to be used for relief work allocated altogether too often with an eye to political expediency?

And the result? This same money which is being handed out in relief payments would go into pay envelopes every week-end—honest wages for an honest week's work. The wheels of industry would begin humming again, purchasing power

would increase thereby calling for more production, the national income would steadily increase, additions would be made to the national wealth, unemployment would rapidly decline and in a very short time the depression would be forgotten.

Finally, labor as well as industry, must ever be on the alert to detect and guard against the fettering of freedom even when a kindly bondage is offered by friendly hands and under the illusion of immediate relief. It is this freedom which distinguishes the characteristic of the individualism of America. It ranks in importance with freedom of speech, freedom of the press, freedom to peaceably assemble, and freedom of conscience. It has to do with food, clothing, and shelter for all of us—those prime economic necessities without which no refinement, no culture, no civilization however conceived or highly wrought, can exist.

Above all else then let us substitute sanity, friendliness, helpfulness, and mutual confidence, and cooperation in our relations between Government, industry, and labor instead of attempting to solve our problems in the spirit of prejudice, hatred, bitterness, mistrust, and opposition.

Senator O'MAHONEY. The committee will stand in recess until tomorrow at 10:30.

(Whereupon, at 12:30 p. m., a recess was taken until the following day, Wednesday, March 9, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

WEDNESDAY, MARCH 9, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to recess, in room 324, Senate Office Building, Senator Joseph C. O'Mahoney (chairman) presiding.

Present: Senators O'Mahoney (chairman), King, Borah, and Austin.

Senator O'MAHONEY. The committee will please be in order.

Senator BORAH. Mr. Chairman, before we proceed, I have something here I should like to read into the record. On yesterday I questioned Mr. Hart in relation to savings accounts in the United States, and expressed the opinion that the savings accounts were held largely by people with an income in excess of \$8,000 a year. I agreed to put into the record a statement from Mr. Moulton, of the Brookings Institution, on that subject. I want to read only a couple of paragraphs:

Families having incomes of \$2,500 a year or less spend practically all their income for bare necessities. (See fig. 5, p. 79.) These families therefore, are practically without conveniences or luxuries. Since, even, in 1929, there were almost 20 million such families and since 20 million families constitute approximately 70 percent of the total population, it is evidence that almost three-quarters of the population were without, and were therefore potential buyers of, luxuries and conveniences. And since 12 million of these 20 million families had incomes under \$1,500 in 1929 and 6 million had incomes under \$1,000, it is probable that many of these people were also potential buyers of unbought necessities as well. The same point may be made in reversed terms by saying that in 1929 only 2 million families, or 8 percent of the population, had incomes over \$5,000 and only 600,000 families or 2.3 percent had incomes in excess of \$10,000. It was to this meager 8 percent that most of the conveniences and luxuries manufactured in America in 1929 had to be sold if they were sold at all. So far are we then from suffering from "excess plant" that a 75 percent increase in production would be necessary in order to supply the entire population with the goods which the Department of Agriculture considers essential to a "reasonable" standard of living.

The obvious conclusion to be drawn at this point would be that American consumption is potentially enormous, that American production is potentially much larger than actual production has ever been, and that the defect in the system lies in the element which connects the two to each other—the element of purchasing power. If the great mass of the population has incomes too small to enable it to buy what it wants and if an infinitesimal minority has incomes larger than it can spend, then consumption will be less than it could be and production also less. The rich, with the large incomes, will put into savings what they do not need to pay out for goods.

Here is the point to which I want to call attention:

Two-thirds of the entire savings (\$15,000,000,000) made in 1929, for example, were made by that 2.3 percent minority of the population having incomes in excess of \$10,000. (See fig. 4, above.) And since the proportion of the national income saved has tended, according to our findings, to increase in recent times with an increase in the concentration of wealth, the process may be expected to continue in aggravated form.

That is an epitomization of the volume by Brookings Institution entitled "Consumers' Power."

Senator O'MAHONEY. You are reading from an article which appeared in what?

Senator BORAH. In Fortune of November 1935.

Senator KING. Who epitomized it?

Senator BORAH. Mr. Moulton.

Senator O'MAHONEY. I wonder if it would not be a good plan to include in the record those figures in the chart on page 79 which show the savings?

Senator AUSTIN. That looks like a possibility.

Senator O'MAHONEY. It shows, for example, that there are no savings whatever in the income group below \$1,200 a year.

Senator KING. I am wondering if that is not wrong.

Senator O'MAHONEY. Of course, that refers to the group as a whole. It shows, as the Senator has just pointed out, that the great bulk were held by families having an income of \$4,600 or over.

Senator BORAH. From \$4,600 to \$10,000.

Senator O'MAHONEY. Two-thirds of the entire savings were made by a minority having incomes in excess of \$10,000.

STATEMENT OF SINCLAIR WEEKS, BOSTON, MASS.

Senator O'MAHONEY. Will you please give your name and residence?

Mr. WEEKS. My name is Sinclair Weeks, of Boston. I reside at West Newton, Mass. I am president of the Reed & Barton Corporation, of Taunton, Mass., and of the United Carr Fastener Corporation of Cambridge, Mass.

Senator BORAH. Are you any relation to the late Senator Weeks?

Mr. WEEKS. I am his son.

Shall I proceed?

Senator O'MAHONEY. You may proceed.

Mr. WEEKS. My purpose in requesting an opportunity to appear before your committee this morning is to endeavor to bring forward my reasons for believing that the proposed act, to be known as the Corporation Licensing Act of 1938, will, if adopted, be unfair and detrimental to the business of the country, and further, that because of present business conditions, it is extremely untimely, coming as it does for discussion at a period when everything should be done to take the brakes off business rather than to place on it additional handicaps and restrictions.

I represent here no one but myself and the two companies with which I am associated in each case as president: The Reed & Barton Corporation, of Taunton, Mass., manufacturers of sterling and plated silverware for 114 years, and the United Carr Fastener Corporation of Cambridge, Mass., manufacturers of fasteners and small metal stampings.

May I first comment on specific features of the proposed act, understanding that the specific act under consideration is a revision of S. 3072 and is identical to H. R. 9589, introduced in the House on February 21 by Representative Mead.

Section 1, paragraph 6: Here, it appears to me self-evident that the particular purpose cited, namely, to prevent interstate commerce

from being utilized to promote unfair methods of competition, is amply covered by the Sherman, Clayton, and related acts, and that the passage of the particular act under review is not necessary to reach this objective.

Senator O'MAHONEY. You acknowledge that it is a good objective?

Mr. WEEKS. I do, so far as antitrust and monopolistic practices are concerned.

Section 3 (a): This says that it shall be unlawful for any corporation to engage in commerce without a license. In view of the requirements involved for obtaining a license, this seems to me an unnecessary, arbitrary, and drastic prohibition, the result of which might very possibly put certain corporations actually out of business. The paragraph continuing, exempts corporations with gross assets under \$100,000; but this exemption is largely, if not completely, nullified by section 7, which under certain conditions gives the Commission unlimited authority to bring these smaller businesses into the licensing scheme. Section 7 actually provides that these smaller corporations conform to the requirements specified in the licensing conditions, stated in section 5 of this act, and thus by indirection, the exemption hereinbefore referred to is, as I read it, completely wiped out for all practical purposes. If there is a sound reason for exempting smaller corporations, even though the exemption is qualified, it seems to me unfair to make fish of one and fowl of the other, and the burdens and restrictions entailed by the bill should not be arbitrarily placed on one class to their detriment in competition with another which, by the terms of the bill is exempt.

Senator AUSTIN. Before you leave that I want to ask you a question, if you do not object to it.

Mr. WEEKS. Certainly not.

Senator AUSTIN. That thought never occurred to me. I have examined section 7 with great care, but it never occurred to me before that the limitation of bigness had been either overlooked or willfully and intentionally omitted. I am inclined to believe you are right. In the present bill section 7, apparently, provides that competition shall be eliminated; that is, competition by those corporations that are not licensed. If they are enjoying a substantial advantage by virtue of their geographical location, for example, supposing they are so near to raw materials that they have an advantage over licensees who are remote from their sources of supply, then this law descends on them and wipes out that competitive advantage.

Senator O'MAHONEY. You would not build up a straw man, would you?

Senator AUSTIN. I certainly would not take away his strength.

Senator O'MAHONEY. You would not build up a straw man and knock him down.

Senator AUSTIN. Oh, you say a "straw" man?

Senator O'MAHONEY. Yes.

Senator AUSTIN. I thought you said a "strong" man. I think that tends to tear down a strong man, who may have his strength because of his position.

Senator O'MAHONEY. There is no intention to do that. If you or anybody else can show it will have such effect, you probably will not have any difficulty in changing it, if it becomes necessary. My feeling

is that it is not necessary, and that you see a ghost where a ghost does not exist.

Senator AUSTIN. I do not think you can laugh this off in that way. Listen to this:

Whenever the Commission shall have reason to believe that any corporation—

I understand clearly that means any corporation below \$100,000—

engaged in commerce, which is not licensed under this Act, is not conforming to the conditions of fair competition above required, and that any article or commodity is being produced, manufactured, processed, or distributed to retail dealers by such corporation in such manner as to interfere with the effective handling of similar articles or commodities by any licensee, or in such manner as to give to the articles or commodities so produced, manufactured, processed, or distributed competitive advantages over similar articles or commodities handled by licensees, thereby tending to defeat the purposes of this Act, and if it shall appear to the Commission that a proceeding by it in respect thereof would be in the interest of the public, it shall issue and serve upon such corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon the day and at a place therein fixed, at least thirty days after the service of such complaint.

As I understand it—and I ask the witness if he understands it that way—that brings in every corporation that produces any articles, and if the Commission believes it to be in the public interest, it shall subject it to the penalties of this act, provided it is not complying with the terms of the act, and provided it has a competitive advantage over those who are doing so, does it not?

Mr. WEEKS. It seems to me it does, sir. If the small company exempted under section 3 (a) has a competitive advantage and is not conforming to the licensing conditions stated in section 5, it seems to me, if that can be shown, that it is obligatory upon the Commission to bring that small company under the provisions of the licensing act.

Senator O'MAHONEY. Of course, it is perfectly obvious that section 7 is tied absolutely to section 5, and that the powers of the Commission are limited to the enforcement of the conditions laid down in section 5. To state it this way, taking one of the conditions that corporations are required to obey the antitrust laws, if a corporation which is exempt from the operations of this bill does violate the antitrust laws, then it obtains a competitive advantage over the corporations which are licensed. You do not mean to testify, do you, that a corporation should be permitted to retain a competitive advantage which arises from a violation of the antitrust law?

Mr. WEEKS. Certainly not.

Senator O'MAHONEY. If that were the effect of section 7, assuming for the purposes of the argument that that is the effect, as it is intended to be, you would have no objection to it, would you?

Mr. WEEKS. I say that section 3 (a) and section 7 conflict.

Senator O'MAHONEY. I understand that; but I am trying to get the logical basis of the understanding between the witness and the committee. So I say, assuming for the sake of argument that that were the effect of the bill, as it is intended to be, you would not have any objection to it, would you?

Mr. WEEKS. As I understand the question—

Senator O'MAHONEY (interposing). Perhaps it would be well to have the reporter read the question, so that you may be sure you understand it.

Senator AUSTIN. I think the witness ought to know the facts. There is one difficulty inherent in the question. You have to assume that the witness concurs in the theory of section 5.

Senator O'MAHONEY. Let us have the question read. I think the witness is amply able to take care of himself.

Senator AUSTIN. Believe me, I know he is.

Senator BORAH. What we want to know is what the meaning of section 7 is.

Senator AUSTIN. That is right.

Senator BORAH. If section 7 conflicts with the other section, then it ought to be reconsidered.

Senator O'MAHONEY. Let us have the question read.

(Whereupon, the following was read by the reporter:)

Senator O'MAHONEY. Of course, it is perfectly obvious that section 7 is tied absolutely to section 5, and that the powers of the Commission are limited to the enforcement of the conditions laid down in section 5. To state it this way, taking one of the conditions, that corporations are required to obey the antitrust laws, if a corporation which is exempt from the operations of this bill does violate the antitrust laws, then it obtains a competitive advantage over the corporations which are licensed. You do not mean to testify, do you, that a corporation should be permitted to retain a competitive advantage which arises from a violation of the antitrust law?

Mr. WEEKS. Certainly not.

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Senator O'MAHONEY. I understand that; but I am trying to get the logical basis of the understanding between the witness and the committee. So I say, assuming for the sake of argument that that were the effect of the bill, as it is intended to be, you would not have any objections to it, would you?

Senator O'MAHONEY. Is the question clear to you?

Mr. WEEKS. I think so.

Senator O'MAHONEY. What is your answer?

Mr. WEEKS. I think my answer was given in the statement I have already made that you should not make fish of one and fowl of another; that you should not give the corporation exempt under section 3 (a) a competitive advantage by placing arbitrary restrictions on corporations not so favorably situated.

Senator O'MAHONEY. How do you get that from the bill?

Mr. WEEKS. A corporation exempted might quite conceivably obtain a competitive advantage by not having to conform to one of the provisions of section 5.

Senator O'MAHONEY. Of course, it is the purpose of section 7 to make sure that they will conform to those conditions set forth in section 5. It all resolves itself down to the question of whether or not the conditions set forth in section 5 are such conditions that they ought to be applied to all corporations. May I take this opportunity to state my views with respect to this bill? I probably have repeated this several times, and may have to repeat it several times in the future.

Senator KING. Why not let the witness give his testimony?

Senator O'MAHONEY. I want him to understand it. I know this witness, like other witnesses who have been before the committee, is testifying under a misconception of the purpose of the bill, just as some Senators talk about it with a misconception of its purpose.

A corporation is a creature of government. It has only the power that the Government gives it. Corporations engaged in interstate commerce derive their powers from States. The purpose of this bill is merely to set forth the fundamental conditions of corporate existence, which must be recognized by all corporations engaged in interstate commerce. It is not the purpose of the bill to give the Federal Trade Commission discretionary power to enforce upon corporations conditions which the Federal Trade Commission deems to be advisable. The power of the Commission is limited exclusively to the conditions laid down in the bill. Do I make that clear?

Mr. WEEKS. Yes.

Senator O'MAHONEY. All right. Proceed.

Mr. WEEKS. May I beg to disagree, however, with that statement. I do not see the need of taking your time further on section 5. I think there are 10 of those provisions. It seems to me that only 1 of the 10 has a direct bearing on interstate commerce. I shall point out as I go along that I think the commerce is not restricted, as you have pointed out, but that it has a great latitude.

Senator O'MAHONEY. Of course, what you are saying is that we have not succeeded in writing into the bill what we intended to write in it.

I will not interrupt you any more.

Mr. WEEKS. Section 3 (b): Here I find the bill provides that before a license shall be issued, a vast amount of detail, a good deal of which must already be filed with other governmental agencies, must be supplied. But the particular feature which disturbs me appears in page 8, lines 1 to 4, where the Government bureau named by the act—the Federal Trade Commission—is given, as I read it, an absolutely free hand, without any restrictions whatsoever, to secure and publicize any and all information concerning the corporations' affairs which it sees fit to acquire. Under this paragraph, substantially all the information required by the S. E. C., and even more, is called for, with the further unlimited authority granted the Commission to require any additional information they may see fit to ask for.

The point I would bring out here is that under this act you are not confronted with a situation covering the sale of securities to the public, but are solely concerned with the operation of a business itself and, in effect, are opening wide the doors of every business in this country to the inspection of competitors, customers, and prospective competitors.

The same paragraph 8, lines 5 to 10, further requires a corporation to agree to operate, as I read it, subject to all present and future acts of Congress, affecting the rights, powers, or duties of corporations. I am not, of course, legally qualified to comment on this specific provision, but as a layman it appears to me that individuals and corporations must expect to operate in obedience to the laws of the land, but to expect an individual or corporation to prejudice their future standing in court in connection with a law the terms of which may be subject to judicial review as to constitutionality in whole or in part, is less to expect such an individual or corporation to make a commitment in advance which is neither reasonable nor fair.

Section 3 (e): This provision, as I read it, requires a corporation to conform to the act—the law of any State or the decision or order of any State authority to the contrary notwithstanding. As a layman, this seems to me an invasion of State rights which is quite unwarranted and very possibly unconstitutional.

Senator BORAH. Before you leave that question, I wish you would amplify it a little about invading States' rights. I am interested in that. I would like to have your explanation of it go in the record.

Mr. WEEKS. It seems to me, Senator, that under the present set-up, if I in Massachusetts want to incorporate a company, I proceed to the secretary of state to secure a charter. The State itself, until this time, has had power to set down or set forth the regulations under which the charter can be granted. If I am correct, as I believe I am, in my statement that a good deal of this bill is irrelevant, as far as interstate commerce is concerned, then it seems to me that there is in this bill a good deal which is purely a matter of State jurisdiction. As I have said, I am not a lawyer and am not qualified to discuss the law.

Senator BORAH. Of course, if any part of this bill invades the right of the States to control intrastate commerce or business, that part will have to come out. If you are correct in your view that the bill deals with matters which have nothing to do with interstate commerce, we will have to conform the bill to that. That is why I want to get your views specifically as to that.

Mr. WEEKS. It seems to me, sir, that the bill is not only aimed at the control of distribution of commodities and manufactured products, but the control of the production, and when you get into the realm of production you are getting, it seems to me, very close to home, as far as States' rights matters are concerned. I do not believe, as I have pointed out, that much more than 1 of the 10 specifications in section 5 really affect interstate commerce as such. It seems to me that under that general licensing act, as it might be termed, or general incorporation act, for all corporations, would interfere with the right of the States to charter corporations as they see fit.

Senator BORAH. Very well.

Mr. WEEKS. Furthermore, this bill, which purports to protect stockholders, here provides that drastic changes in a charter may be ordered by a corporation's board of directors without any reference to stockholders whatsoever.

Section 4: This section provides that no applicant shall be entitled to a license if it is an unlawful trust or combination in violation of the antitrust laws, and so forth. This provision seems to me to be irrelevant and unnecessary and, in effect, to place control upon control. If a corporation is an unlawful trust or combination in restraint of trade, it should not be allowed to continue operating in this manner, and as far as I know, there is plenty of law already on the statute books covering any and all such situations, and the courts are open to the government and to private litigants to stop such practices.

Senator AUSTIN. May I interrupt you at this point?

Mr. WEEKS. Yes.

Senator AUSTIN. Is not the jurisdiction vested in exactly the same board or commission that it would be vested in if this bill became a law, and that is the Federal Trade Commission?

Mr. WEEKS. I believe so, sir.

Senator O'MAHONEY. You are quite correct as to that.

Senator AUSTIN. I do think the antitrust laws need some attention. I would like to have "monopoly" defined. I would like to have the elements specified. I would like to see the affirmative side of the antitrust laws set forth in the law. I would like to see those things restated.

Senator BORAH. Senator Austin, the Supreme Court of the United States, in the numerous decisions which have been rendered, has practically specified the things which constitute monopoly and monopolistic practices.

Senator AUSTIN. Why not restate it and put it all together.

Senator BORAH. That might be all right, but when you come to specifically state those things you are in danger of leaving something out.

Mr. WEEKS. It is like the attempt to define fraud.

Senator BORAH. Yes. I think the antitrust laws are sufficient, if we could fine somebody with nerve and courage enough to enforce them.

Senator KING. I agree with the Senator. That was the view taken by Mr. Vinson and by Mr. Gregory, his Attorney General. There has been no misinterpretation, as far as I know, by the Chief Executive or the Department of Justice and the several Attorneys General. The only question is that they have not enforced it. I went to the Attorney General in Mr. Harding's administration, and to the Attorney General in Mr. Coolidge's administration, and begged them to enforce it and said, "If you need additional money we will give you an additional million dollars for the purpose of enforcing the Sherman and Clayton Acts." Those two acts, plus the provisions of the Tariff Act, known as the Wilson Tariff Act, it seems to me, could efficiently deal with monopolistic practices.

Senator BORAH. Mr. Weeks, we are taking up all of your time.

Mr. WEEKS. Section 5 (a): This paragraph aims to eliminate differentials in rates of pay or in rights granted as between female and male employees. The paragraph, however, is qualified by covering female employees, who perform services approximately equivalent to those performed by male employees. This qualification is essentially controversial and will make the paragraph extremely difficult to interpret. As a manufacturer, may I say that rates of pay for female employees are, in industry, customarily lower than the rates of pay for male employees. But it is necessary for you to appreciate that female employees are universally given work requiring less strength and endurance than work given to male employees.

If female employees perform services equivalent to those performed by male employees, they should be paid the same rates of pay, but they should not be given the same type of work and, generally speaking, are not. The objectionable feature of this paragraph is that it leaves to the discretion of the Commission the controversial question as to whether or not the services are approximately equivalent. The decisions on this paragraph alone might well swamp the Commission in the administration of the act.

Section 5 (c): This paragraph provides that any licensee, organized after date of enactment of this act, shall have its chief place of business, executive offices, and meetings of its board of directors within the State under the laws of which it is organized. Frankly, I see no possible reason for the inclusion of this provision. To the extent that there is any problem in this connection, the problem is adequately dealt with by State statutes. Massachusetts, for example, requires of a corporation chartered under its laws that all meetings of stockholders must be held in the State, but permits operations and the holding of director's meetings to be held wherever business convenience

may dictate. To show how this might work out, let us take an example of a Massachusetts corporation operating a mill within the geographical limits of the State. The mill, for various reasons, may be moved to another State, and under the provisions of this act, it would as a result be necessary to give up the Massachusetts charter and reincorporate in the State where the business was then located, thus imposing a very substantial reorganization expense on the stockholders.

I think the paragraph further is absolutely unworkable, because you may have a corporation with mills and factories scattered all over the country. I believe I am correct when I say the General Motors Corporation is incorporated under the laws of Delaware, has an office in New York, and plants in various parts of the country. I do not see how this paragraph could be applied without utter confusion and almost chaos in the affairs of the corporation. I see no good whatsoever to be accomplished by this provision of the bill.

Senator O'MAHONEY. Do you give any weight to the phrase—
in the case of any licensee organized after the date of enactment of this act.

Mr. WEEKS. I do, sir; because business is always in a state of flux, and even now a corporation might be organized after that date. Two or three years later business convenience might dictate that it move and establish a new factory in some other State, and eventually that factory might control the larger part of its production. I see no good to be accomplished by it, and I think it would be extremely difficult to work out.

Section 5 (f): State laws already afford stockholders adequate rights to financial information, and these rights are supplemented, in the case of large corporations, by the requirements of the Securities and Exchange Commission. Therefore, no such provisions seems to me to be necessary. If this provision is incorporated in the bill, in the case of corporations subject to the requirements of the Securities and Exchange Commission, the provision requiring the filing with the Federal Trade Commission of all accounts, merely duplicates the corporations' obligations in this respect.

Section 5 (g): This paragraph, in effect, eliminates the issuance of nonvoting stock, and such a provision, as I see it, has no possible connection with the regulation of the business of corporations engaged in interstate or intrastate commerce. There have been many cases where nonvoting stock has been sold to the public. The nonvoting feature is usually compensated for by the stock carrying other provisions of a more favorable nature than is carried by the voting stock. Possibly the sale of nonvoting stock should be regulated. It should not be prohibited, and in any event, it is not a proper question to be dealt with in a statute dealing with active business operations of corporations.

Section 5 (h): The payment of bonuses and commissions, in addition to regular compensation, must now be disclosed by corporations subject to S. E. C. regulations, and possibly a requirement that they be disclosed in all cases would be in order. However, as a practical matter in connection with the operation of a business, no useful purpose would be served by referring such a matter to a stockholders' meeting. Certainly, if the larger decisions, affecting the operations of a business, were left to the judgment of a board of directors, a

matter of compensation of this character should also be subject to the Board's decision. The board of directors has, in all cases that I know anything about, much better means of appraising the value of services rendered than have stockholders, who are not, by the very nature of the case, in close or intimate touch with the detailed conduct of the business. So I say, while it might be necessary to regulate it, it should not be regulated by those who have no detailed knowledge of the operation of the business.

Section 5 (j): This paragraph authorizes a stockholder to deliver his proxy to a certified corporation representative. The same paragraph in S. 3072 obligated a stockholder to do this, but the original provision has apparently been modified to make the action permissive rather than mandatory, which is, of course, a step in the right direction. I see no conceivable need for the paragraph at all, however.

Senator O'MAHONEY. May I say that I doubt very much whether that original paragraph carried any obligation? I do not want your remark to go unnoticed in the record.

Mr. WEEKS. Proxies usually carry printed thereon the names of individuals as proxy holders, but any stockholder may legally deliver his proxy to any individual he sees fit, and the only obligation of such a proxy holder is to identify himself at the stockholders' meeting in question. So I see no need of such a provision.

Section 8 (c). Herein it is specified that the court may order that any officer or director of the licensee, responsible for the violation of the conditions of its license, shall not serve until after the expiration of such period as the court may fix as an officer or director of a corporation engaged in commerce. This, it seems to me, is an inconceivably drastic provision—the result of the application of which would be that such an individual for possibly the slightest infraction of the rules would in substance be deprived of the opportunity to earn his livelihood. I can hardly believe it to be the intent of Senators and Representatives to fix so drastic a penalty.

Senator O'MAHONEY. It would enforce the antitrust law, would it not?

Mr. WEEKS. I do not see that the enforcement of the antitrust law has any particular connection with this drastic provision of the bill.

Senator O'MAHONEY. You are not unaware of the fact that there have been monopolistic practices and those who perpetrated them have escaped liability, are you?

Mr. WEEKS. My knowledge of history is not quite enough to know just the cases you refer to, but I assume they may have been.

Senator O'MAHONEY. Is it not a matter of common knowledge that the antitrust laws have been ineffective?

Mr. WEEKS. I do not believe they have been ineffective, or rather, I believe that if they have been ineffective it has been for lack of proper enforcement.

Senator KING. The law against the gangsters and fraud has been ineffective, in that there are many gangsters and those who commit fraud who escape prosecution.

Senator O'MAHONEY. Until we got a national law, and then we put some of them behind the bars.

Mr. WEEKS. I can hardly believe it to be the intent of the Congress to fix a penalty so drastic that it would eliminate the opportunity of a man to earn his living. If he has been so false to his trust as to suffer

such a penalty, it seems to me that to cover such a situation the man probably should be in jail.

Senator O'MAHONEY. But the outstanding fact which must be laid down daily before the people of America is that there are millions of people in the United States who are now unable to earn their living. Some of us believe that this is the result of monopoly, and we believe that if monopoly can be restrained it will not be necessary for the Government to pile debt upon debt in order to make relief appropriations. You will agree, will you not, that the antitrust laws ought to be made effective?

Mr. WEEKS. I will.

Senator O'MAHONEY. I wonder if you would be good enough to suggest to the committee, not today but some time later, your idea of how they can be made effective. That is all we are trying to do. We are trying to find some way to restore competition, and would be very happy to have you make some suggestions. It was said the other day by Senator Borah that unless something of that kind is done business is going to find itself taking something a good deal more drastic than it may like.

Mr. WEEKS. May I say that I do not agree that competition is nonexistent. I have had some experience in business.

Senator O'MAHONEY. I did not say it was nonexistent.

Mr. WEEKS. I am quite sure that in my own business there is plenty of competition.

Senator AUSTIN. I want to ask the witness, before he departs from this paragraph, if he is aware of the fact that we have, during the past 2 years, had an example of the exercise of that sort of thing, in the cancelation of the air-mail contracts, nine big contracts, with the resultant disqualification of some of the finest experts in air transportation from ever engaging in any contract with the United States Government during their lifetime? That was a situation that arose by virtue of the air-mail law that was passed to perpetuate that punishment upon them without trial by a court or a notice or a hearing. That is what we have already had. Are you aware of that?

Mr. WEEKS. Yes; I am, sir.

Senator O'MAHONEY. Of course, this particular provision is in the hands of the court. It could be invoked only by the court.

Senator AUSTIN. Yes. It has that difference and benefit.

Mr. WEEKS. Section 13: Herein, despite the statement of the Senator from Wyoming that the revision of S. 3072 contemplates no delegation of power to any Government agency, it seems to me, as in section 3 (b), that the Commission is again granted unlimited authority to go on any kind of a fishing expedition it desires to inaugurate. As I read the section, there is no limit to the action which the Federal Trade Commission might take under its authority.

Senator BORAH. I am compelled to go to another engagement. I am very sorry I have to leave. I congratulate you on a very fine statement you are making.

Mr. WEEKS. Thank you.

Senator KING. I am in the position I have to leave to attend another committee. I am very sorry to have to leave before you complete your statement.

Mr. WEEKS. Thank you. I will not take very much more of your time.

Senator O'MAHONEY. Take all you wish. Do not worry about that. We have all the time there is.

Mr. WEEKS. Section 16: As I read this paragraph, I not only question the constitutionality of its provisions, but in addition can hardly believe it to be the intent of the Congress to attempt to deny to corporations all access to the courts because of infractions of the conditions imposed in section 5.

Section 18: These provisions, which are mandatory, seem to me to be drastic in the extreme and are substantially out of line with the offense which might be committed thereunder.

Section 19: Page 26, lines 3 to 5: This provision prohibits a director or officer of a particular licensee from serving as a director or officer of any corporation which has advanced or loaned money to any licensee. Some time ago it was decreed in substance that no one in the investment banking business could serve as a bank director. As a result of this action, many such directorates were vacated and the vacancies filled for the most part by individuals engaged in the corporate business life of their community. In addition to serving as an officer and director of the two companies I represent here today, I also serve as a director of the bank in Boston with which these two companies do the larger share of their business.

Under the provisions of this section, I take it this bank could not loan money to the companies with which I am identified as long as I am identified and continue to serve as a director of the bank itself. I see no safeguard to be developed by the imposition of such a restriction but rather the interruption of business relationships which are both normal and desirable in any community.

In the bank with which I am identified there are 24 other directors. Occasionally we borrow money. If the loan is no good the bank examiner eventually will catch it. If it is not good the officers and directors who make the loans would not approve it. It would not be approved by the other 24 directors. I see no possible safeguard to be developed by the imposition of such a restriction. You would break up relationships which have been normal and desirable.

In closing may I call your attention to the fact that much of the legislation enacted during the past few years has concentrated here in Washington a vast amount of power over the activities and welfare of our citizens generally. This bill, if enacted, will carry us several jumps further along the road to complete centralization and control here in Washington over every conceivable activity scattered all over this great country. The bill itself will give far-reaching and unprecedented control over the business life of the country, and the mass of detail resulting from its administration will prove an almost insurmountable obstacle to be overcome. It seems to me that it will give to the Commission entirely unwarranted power to publicize the intimate and confidential affairs of its licensees. It sets control upon control—duplicating, as it does in many of its provisions, other recent legislation, as for example, the Securities and Exchange Commission Act, and the National Labor Relations Act, as well as acts and agencies of the various State governments.

Above and beyond this, however, it seems to me that the way to make progress is to do everything conceivably possible to stimulate business—and profitable business—activity. The business of the country is the only natural employer and the only direct and indirect

source of revenue to the Government. If these are facts, isn't it reasonable for individuals, who are charged with the responsibility of actually meeting pay rolls and of maintaining their business institutions on an even keel, to ask, particularly with business conditions as they exist today, that the Congress do everything it can to help and not to hinder? Almost every human and certainly every business relationship which I know anything about is based on confidence. Lack of confidence is what is holding up the procession today, and projected legislation of the character of this bill will certainly not help but rather will seriously hinder the reestablishment of that confidence in the future which today is so essential to our continued progress.

I appreciate very much the opportunity of appearing before you.

Senator O'MAHONEY. I believe you said you are a director of the bank in Boston?

Mr. WEEKS. I am.

Senator O'MAHONEY. Is that a national bank?

Mr. WEEKS. Yes, sir; the First National Bank of Boston.

Senator O'MAHONEY. Do you find the Federal control of national banks an impediment in business?

Mr. WEEKS. Senator, that takes you into quite a subject. In a general way, I would say no. There are some things about Federal control that are objectionable.

Senator O'MAHONEY. Oh, certainly. Nothing is perfect. We cannot expect that of any law or of any institution. I call your attention to the fact that the National Banking Act is a comparatively modern act in our Federal economic system.

Mr. WEEKS. It never has been mandatory to enter the national banking field.

Senator O'MAHONEY. Of course, it has not. Neither is it mandatory to enter into interstate commerce. Before the Lincoln administration banks were local or State banks. The business of the country had grown to such an extent that in the judgment of the Congress and the President it became necessary to supplement the old State banking system with a national system. The theory back of this bill is that interstate and foreign commerce have reached such a dominant position in the economic life of all of our people that we ought to have a national rule for it.

Objections were made to the National Banking Act on very similar grounds to those which you are making now. The argument was made that it would be a violation of States rights, and that it would be concentrating everything in Washington. But it seems to me that everybody must realize that the development of commerce, the development of industry, has been such that a necessary concentration has been going on. It certainly has been in business. Business stands the whole Nation, if not the world. That is true of a lot of the expansion of government.

What we are trying to do is to find a way to write the rules for the national corporations. It may be the rules we have in this bill are improper ones. I do not know. But of one thing I am certain, and every day increases that conviction, that we must establish the rules for national commerce and of the instrumentalities which carry it on.

We greatly appreciate your very clear and comprehensive statement.

STATEMENT OF FRANK L. PECKHAM, REPRESENTING THE SENTINELS OF THE REPUBLIC, WASHINGTON, D. C.

Senator O'MAHONEY. You may proceed, Mr. Peckham. First give your name and whom you represent.

Mr. PECKHAM. My name is Frank L. Peckham. I am a lawyer, residing in Washington, D. C. I appear here as acting president of and on behalf of the Sentinels of the Republic, which is a voluntary patriotic organization incorporated under the laws of the State of Massachusetts in 1922, having approximately 3,000 members scattered throughout these entire United States. As a background for our opposition to the pending bill, I would like to read into the record the purposes for which the Sentinels of the Republic are organized and which they have consistently supported in the organization.

Senator O'MAHONEY. Do you maintain an office in Washington?

Mr. PECKHAM. I maintain an office in Washington, and the organization maintains an office in Washington.

Senator O'MAHONEY. Is the organization's office open all the time?

Mr. PECKHAM. Yes.

Senator O'MAHONEY. Do you maintain a staff?

Mr. PECKHAM. We have two employees—an executive secretary, who looks after the correspondence, and a stenographer.

Senator O'MAHONEY. You are not the executive secretary?

Mr. PECKHAM. No; I am the acting president.

Senator O'MAHONEY. Are you a salaried employee?

Mr. PECKHAM. No. I pay my own salary and all my own expenses. It is wholly voluntary and on a contribution basis. We have a small amount of dues, but we all have to contribute to help pay the expenses.

The purposes for which we are organized and which we have consistently maintained are these:

To maintain the fundamental principles of the American Constitution; to oppose further Federal encroachment upon the reserved rights of the States and of the individual citizen; to stop the spread of Communism; to prevent the concentration of power in Washington through the multiplication of administrative bureaus under a perverted interpretation of the general welfare clause; to help preserve a free republican form of government in the United States.

I have a few brief paragraphs boiled down some of the reasons for our condemnation of this measure. I would like to put these in the record, and then comment briefly on some of the specific provisions of the bill.

The pending bill, S. 3072, marks another long stride toward complete centralization of governmental authority, eventual obliteration of State sovereignty, and regimentation of all human activities.

Temporary exemption of corporations with gross assets of less than \$100,000 will not be binding upon future Congresses. In fact, this bill now carries provisions, under section 7, page 14, relating to competing concerns, that will subject to the licensing requirement all organizations engaged in commerce.

Instead of encouraging business enterprise—in a world and in a nation where an increase in such enterprise is sorely needed—this measure puts a stumbling block in the way of business activity.

Today, especially, government should be fostering industrial activity, new business enterprises, industrial experimentation, and

expansion. It should say that all are welcome to engage in interstate commerce without restriction, except as to those acts which by legislation—supported usually by common sense and reason—have been made unlawful. This bill says that none may engage in interstate commerce unless and until a special permit has been obtained from a bureau in Washington.

By the provisions of the bill and the regulations inevitably to be promulgated thereunder, organizations engaged in commerce will be faced with major additions to the already overwhelming volume of reports to be prepared and filed and questionnaires—favorite concoctions of bureaucrats—to be answered. There is no necessity for such legislation. It projects unnecessarily further interference with the activities of citizens of the United States and accelerates the growing tendency of government to become an insufferable nuisance.

Directing your attention first to section 2, with respect to what constitutes commerce, as I read the provision, it would include any transactions across the borders of a State, and would make subject to the provisions of the act any concern which even very occasionally conducts any transactions beyond the borders of its State. I am going over this very briefly, because a good many of these things have been said more extensively, but these are our own ideas developed from an examination of the bill itself rather than from what we have heard witnesses say.

Under the closing provision of subsection (a) of section 2, it is quite possible that its provisions might be held to apply to intrastate sale of goods produced from materials acquired in interstate commerce or purchased in interstate commerce. In other words, if a local merchant should supply his shelves with goods purchased from outside the State, under the terms of this section I think he could be held to have engaged in interstate commerce and therefore would be subject to the law.

Senator AUSTIN. Is not that the theory of the bill?

Senator O'MAHONEY. Oh, no. You have misread the bill.

Senator AUSTIN. That ought to be cleared up.

Mr. PECKHAM. It may be cleared up, but, as I read it, it is susceptible of that interpretation.

Senator O'MAHONEY. I think you have misunderstood it, but if it is, it can be changed. It was not intended to be anything of the sort.

Mr. PECKHAM. We are basing our criticism upon its effect, and not upon what its authors intended to say.

Senator O'MAHONEY. You mean what you think the effect will be?

Mr. PECKHAM. Our criticism is based upon what we think the effect will be.

Senator O'MAHONEY. Very well.

Mr. PECKHAM. In respect to the provision for reports and sworn statements, there is a duplication of what is already required under the Securities and Exchange Act from most of the large corporations.

Senator AUSTIN. Certainly, a dividing line is necessary, so far as the obligation to file plans and prospectuses goes. That seems to be \$100,000. In other words, under the Securities and Exchange Act every corporation having a capital of \$100,000 or more must file such papers.

Mr. PECKHAM. Yes. I think there is a line drawn between corporations with a small capitalization, which is \$100,000 or some other similar figure. I think it has been changed from time to time by the Commission, under the law. Of course, that calls for more information, and the Commission under it could call for more information, as explained by Mr. Weeks, than is required now to become a public record with the Securities and Exchange Commission.

And in that connection, may I draw attention to the fact that the small corporation, which has \$100,000 of capital assets and is drawn under this law, may well be called upon to spend 1 or 2 or 3 or 4 or 5 percent of its capital preparing and making the multitudinous reports so customary for Washington bureaus to demand.

Taking \$100,000 of assets, you can readily conceive it would cost a corporation at least 1 percent to make up these statements and reports that are required from time to time, if this bureau follows the practice ordinarily followed by Washington bureaus; \$1,000 out of \$100,000 assets means that the assets are reduced to 99 percent of what they were before. So this complaint about the volume of reports required is not so fanciful as it may seem. It might be helpful to the lawyers, but why should a concern have to be running to lawyers all the time to find out what kind of report they have to make to various governmental agencies, under threat of penalty or reprisal? As it is now the small-business man is burdened down with the vast number of returns and reports he has to make, and an organization with \$100,000 capital or assets, if it is engaged in any business, is a comparatively small organization.

Senator AUSTIN. When you are considering the matter of size, you will observe this bill uses gross assets as the dividing line. You can conceive of a good many corporations having \$100,000 of assets which would not have liquid capital exceeding perhaps \$10,000, could you not?

Mr. PECKHAM. Oh, certainly. I suppose you would find that in a great many instances throughout the country. But when you get to the end of section 3, subsection (e), we find that in order to obtain a license a corporation engaged in an isolated instance of interstate transaction must give the Federal Congress a blank check to regulate its affairs thence forward. In other words, in order to get that license, even to transact maybe 1 percent of its business, the 1 percent may be interstate commerce, it must say to Congress that "Hereafter we are subject to any act regulating our rights, powers or duties." That is something which I do not believe the Congress, under the present constitution, has the right to do. In order to obtain that license, the corporation would be subject to having Congress say what it must do with respect to all details of corporate management or business activities. It could impose upon corporations any labor conditions. It could undertake to regulate the prices at which they buy or sell. It could prevent wholesale or retail business from being conducted by the same concern. It could strike at chain stores by limiting the number of outlets that a licensee could operate.

Senator O'MAHONEY. Would you mind my saying that I regard these criticisms as fantastic?

Mr. PECKHAM. Well, Senator, I might say that I consider in the light of history, except in the past 5 or 6 years, that this proposition is wholly fantastic, but probably not for the same reasons. We have an entirely different philosophy toward government. I still believe that the least governed are the best governed.

Senator O'MAHONEY. That is exactly my conception.

Mr. PECKHAM. And I believe in our dual form of government.

Senator O'MAHONEY. That is my conception.

Mr. PECKHAM. Congress could go further and attempt to license or limit the mechanization of industry, in response to this hue and cry about technological displacement. Of course, it could go further and undertake to control the volume of production that might be allocated to licensees. In other words, it is a blank check in return for this license, and the corporation says it will hereafter abide by any legislation that Congress may prescribe, regardless of whether or not it is within the province of the Federal Congress under the Constitution. It is a contract between the licensee and the Federal Government.

Of course, the provisions against unlawful combination and unfair trade practices are already covered by existing law, and any corporation or person guilty of violation of those laws should be prosecuted, civilly or criminally, and could be prosecuted under existing law. Because there are a few rascals that ought to be in jail, or a few corporations that ought to be prosecuted, is no reason why the Federal Government should stretch out its hands and try to control the activities of all corporations or groups that might engage in interstate commerce to any degree.

What guarantee is there that this law would be any better enforced in respect to unfair trade practices by the agency which now has control of the investigation and prosecution of those practices, because we have already another law on the statute books requiring that those things should be promptly investigated now under the Federal Trade Commission? Are you telling the Federal Trade Commission twice that it shall do so and so? Are you telling the Securities and Exchange Commission twice what it has already been told to do?

Of course, if the Commission reaches the point of refusing a license for violation of these provisions of subsection (a) of section 4, under paragraph (c), the corporation may appeal to the courts. That means the courts shall then try the corporation for violation of the antitrust laws, which could now be done by prosecution or civil suits, except that under this bill the court would be bound by the facts found by the Commission instead of having a completely new trial before the court.

Under section 5 we find labor restrictions, based upon the fact that the corporation, if engaged to any extent in interstate commerce, must subject itself to control in the matter of these labor conditions, which in the *Child Labor Law case* and the *Schechter case* the Supreme Court said the Federal Government had no right to control. It is writing into law an attempt by Congress to, in very large measure, establish the powers which are attempted to be given to the Federal Government under the so-called equal rights amendment that is pending before the Congress now and which has not yet been submitted to or ratified by the States. If and when that becomes a part of the Constitution, Congress will have the power to legislate as provided in this subsection (a) of section 5 with respect to female employment.

The same criticism applies, I think, to subsection (b), that it is an attempt to use the licensing provision as a means of acquiring control of child labor, which so far the States have failed or neglected to give to Congress under the pending child-labor amendment. I think the

thing to do, if Congress is going to exercise that power, is to wait for ratification of the child labor amendment.

Senator O'MAHONEY. I observe that your organization opposed the child-labor amendment submitted in 1924 and the so-called Vandenberg child-labor amendment.

Mr. PECKHAM. Yes; we have consistently opposed those.

Under subsection (d) of section 5 it is required that licensees shall do the things which are now required of them by law; that they shall refrain from dishonest trade practices, unfair methods of competition, violation of antitrust laws, monopolizing or attempting to monopolize, and so on. The Federal statutes already prohibit those things with respect to anybody engaged in interstate commerce, whether they have capital assets of \$100,000 or \$10, so that this provision simply prohibits them from doing the things they are now prohibited from doing. It seems to me it is an unnecessary inconvenience and involves unnecessary meddling by the Federal Congress in purely local affairs. The question of equal right to vote seems to me also an unnecessary meddling in the affairs of business. The privilege of voting is often one of the rewards to those taking the greatest risk, such as common-stock holders whose right to participation in earnings is subordinate to the right of preferred stockholders. There is something given in exchange for a surrender of that privilege.

Of course, under subsection (k) the licensee is subject to and must accept any requirement not inconsistent with the laws of the United States that may be made by the State of its incorporation. That reserves the right of the State, so far as Congress does not attempt to change that right. It must also accept any requirements that may be imposed by the Congress as a condition of its right to engage in commerce. That is simply a reiteration of the blank check the corporation is required to give to Congress before it can engage in interstate commerce.

Under section 7, respecting competing corporations, the provisions of that section mean a gradual extension of the act to require a Federal license of all corporations engaged in interstate commerce, regardless of their financial size or whether or not they are actually engaged in interstate commerce. I do not think that is constitutional. I do not believe the requirement would be sustained. It merely means that Congress or its agency will attempt to regulate the affairs of a concern engaged wholly in intrastate business, because it may affect the business of one of the licensees. It would not have been sustained as constitutional a few years ago. I do not know what the courts will hold from now on. It is reaching a point where any power the Federal Government desires to exercise is constitutional. That is one of the misfortunes of change.

Respecting revocation, under section 8, the revocation might be for violation of some condition which, without the license, the Federal authorities would have no right to stop—it may be for quite a minor offense. It is not impossible that with the many rules and regulations to be complied with there might be some very minor specification that would bring the licensee within the provisions of this revocation section and enable the Commission to engage in punitive expeditions against those they did not like politically or otherwise.

I have already alluded to the facts that the court would be bound by the findings of fact found by the Commission. Of course, the bill

provides for publicity. I suppose there would be a great increase in the number of publicizing agencies now being carried on in Washington.

Of course, inevitably, under section 18, new crimes are created to be punished. Most of the crimes specified in the bill are now punishable, and it merely provides a new punishment for the same old crimes, to a large extent. Of course, it provides possible severe punishment for very minor offenses, under the provisions of this act.

Under section 20, there is a provision for the Civil Service Commission giving licenses to certified corporate representatives. I think the effect would be very largely to create a new army of private professional snoopers. Of course, it also necessarily creates a new misdemeanor to be punished by the criminal courts.

There has been a good deal said about the wicked State of Delaware and some of the other States that create corporations. I may be wrong, but to my mind these States do only one thing. They say to a group of persons that they might go out as a group and do anything that any other group of individuals might do, and clothe them with one or two important powers which individuals do not possess. One is continuation as an entity, and the other is the opportunity to limit the amount of capital they shall risk in the enterprise. Otherwise, these corporations can do nothing that any individual citizen cannot do under the laws of most of the States. I do not think the corporate form is responsible for any of these vices.

If I may refer to a personal experience, by way of illustration, I have some clients who constitute a family engaged in a small enterprise near Washington. At present the business is operated by husband and wife. It is a business that is based upon daily purchases and sales. It has a few employees. If the husband or the wife should die, that business would stop. At least, it would stop until an administrator could be appointed and authorized by the court to conduct the business. It is virtually a partnership. The whole operation of that little business would be thrown into confusion and probably wrecked in the process of waiting for the probate court to authorize the administrator to carry on the business. By organizing that into a small corporation, regardless of whether or not both of those persons die, the business would continue. There is nothing particularly vicious about that. I advised them that that was the proper course to pursue.

Senator O'MAHONEY. Who says that there is anything vicious about it?

Mr. PECKHAM. There has been a good deal said about corporations created by the State of Delaware. I think there has been background for criticism of the corporate form of doing business.

Senator O'MAHONEY. I have heard no criticism before this committee of that.

Mr. PECKHAM. Well, to take another illustration, there is no reason why a citizen of the State of Delaware should not go out and engage in business anywhere in the country. He might own mines in some State, or operate a factory in another place. The mere fact that it is a corporation does not carry with it any particular vice that I can see.

Senator O'MAHONEY. Certainly not. Nobody has said so.

Mr. PECKHAM. They keep asking why the State of Delaware should clothe these people with the power to do business. It only clothes

them with the power of continuity and limiting the liability which they shall incur in the enterprise.

Senator AUSTIN. Will you permit a question?

Mr. PECKHAM. Yes.

Senator AUSTIN. As I gather the trend of your comment, it is to this effect: that if it is ethical and moral, from the point of view of public welfare, that a private individual may engage in interstate commerce and not be subject to these clogs upon business contained in this bill, why should it be unethical for a corporation to do it?

Mr. PECKHAM. I do not see any difference. I still believe, with reference to the antilynching bill, that because there are isolated offenses at which such legislation is aimed, that is no excuse or justification for the Federal Government injecting itself unnecessarily into that situation, even if it may have the power to do so. The same reasoning applies to this bill.

Senator O'MAHONEY. What do you think of dummy directors?

Mr. PECKHAM. I have heard of them. I do not know any of them. Do you mean directors who take no part in the deliberations?

Senator O'MAHONEY. No. I do not mean that so much as I mean the organization of a corporation by persons who are really not the directing heads of the corporation, but are merely lending their names, such as a person desiring to organize a corporation for a particular purpose naming his stenographer or bellboy or bootblack to act as director of the corporation. They have no interest in it and no capital invested. They are mere dummies to do what the persons behind the scenes want them to do. You recognize the fact, do you not, that there has been built up in this country a very intricate system of corporate devices by which the investors have been robbed?

Mr. PECKHAM. I suppose there have been such cases.

Senator O'MAHONEY. Do you think there is anything wrong about making it impossible for corporations to organize in that way?

Mr. PECKHAM. I suppose there is nothing wrong about it, but I do not believe that the Federal Government should do it.

Senator O'MAHONEY. All right. If we can segregate the provisions of this bill or any bill which, from your point of view, gives the Government the power to meddle, from the provisions which affect the corporate structure and maintain integrity in the management of the corporation, would you have any objection to the second group of rules?

Mr. PECKHAM. I would object to any licensing, because I think the Federal Government has practically exhausted its power already in the antitrust and fair-trade laws.

Senator O'MAHONEY. That, of course, is a question of law.

Mr. PECKHAM. Yes.

Senator O'MAHONEY. Your feeling, I take it, is that the Federal Government does not have the power to regulate the nature of the instrumentalities which carry on interstate commerce?

Mr. PECKHAM. Yes. I think it can control the channels, but cannot go beyond that.

Senator O'MAHONEY. It cannot define the powers and responsibilities of the corporations?

Mr. PECKHAM. No.

Senator O'MAHONEY. That is your opinion?

Mr. PECKHAM. Yes.

Senator O'MAHONEY. Do you recognize that corporate development has resulted in the creation of a new sort of economic system which dominates the entire economic life of the country, without giving individual citizens the protection which they thought was given by a free government?

Mr. PECKHAM. I suppose there has been to some extent. I remember William Jennings Bryan postulated the same hypothesis, that the existence of corporations and their activities beyond State borders made it necessary that they be taken under control. I do not agree with that. I think there are ample means of control of any violation of ethics or morals, now already inhibited by Federal law. When people attempt to do those things in the course of interstate commerce, which affects interstate commerce, I think Congress has sufficient authority to punish them. I do not agree with the apparent theory of those who say the laws cannot be enforced, any more than I agree that under this bill the Federal Trade Commission would enforce them any better than it does now. The fact that such situations may exist is no excuse for a law of this kind, or any new law. There are already laws that are ample to control such conditions.

If there are unfair trade practices in the course of interstate commerce, they are already punishable, and the agency you are setting up under this bill would have no more power to control that situation than it does now. Why does it not do it? Do you think by saying it twice to them they will do it any better? I think the answer to the problem is to find out why our law officers do not enforce the laws that now exist.

Senator AUSTIN. I would like to make this comment; that I have personally been told by one who spoke apparently with some authority from the Federal Trade Commission that the reason why they have not succeeded in enforcing the Federal Trade Commission Act and the Sherman antitrust law and the Clayton Act is because of the uncertainty of their power, the indefiniteness of the law as written and now interpreted. That is why I, for one, believe that the law should be restated, even to the point of writing into it in the form of a statute the interpretation that has become settled by repeated adjudications.

Mr. PECKHAM. I do not think that is a valid answer. As Senator Borah pointed out, we have the interpretation of the courts to guide us, and there is danger in attempting to enumerate in a statute all of these different specifications.

Senator BORAH. Perhaps another reason why the Federal Trade Commission was unable to enforce those laws is that for a long time it was not supposed to enforce them while we had the N. R. A. and those things. They became somewhat discouraged, because the policy at that time was monopoly.

Senator O'MAHONEY. We will recess at this time until 10:30 tomorrow morning.

(Whereupon, at 12:15 p. m., a recess was taken until the following day, Thursday, March 10, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

MARCH 10, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, in room 324 Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman), presiding.

Present: Senators O'Mahoney (chairman), Borah, and Austin.

STATEMENT OF WILLIS J. BALLINGER, ECONOMIC ADVISER, FEDERAL TRADE COMMISSION

Senator O'MAHONEY. Please state your name and the position you occupy.

Mr. BALLINGER. My name is Willis J. Ballinger. I am economic adviser to the Federal Trade Commission.

Senator O'MAHONEY. You have been requested by the chairman of the committee to appear, because we desire to have your analysis of the subject matter with which this bill deals. Will you be good enough to proceed?

Mr. BALLINGER. Mr. Chairman and Senators, at the request of Senator Ashurst, chairman of the Judiciary Committee, I am appearing before this committee.

I understand from Senator O'Mahoney, chairman of this subcommittee, that I am called upon to furnish data and make some comment upon certain provisions of the Corporation Licensing Act proposed by Senator Borah and Senator O'Mahoney.

This bill, Senators, has been widely hailed in many quarters as putting real teeth into the antitrust laws. In other quarters it has been criticized as putting too many teeth into such laws. Now at the present time I do not wish to be drawn into the controversy of whether the power of the courts to revoke the license of a corporation which has violated the antitrust laws is wise, sound, effective, or an overdrastic, dangerous way to promote an observance of the antitrust laws. What interests me a great deal is that the distinguished sponsors of this proposed measure have apparently come to the conclusion that a strong penalty for violating the antitrust laws is advisable.

A good many lawyers and economists have believed for a long time that the antitrust laws should be amended in a number of respects to make them more effective. Some hold that the basic antitrust law, the Sherman statute, was dealt a mortal blow when the Supreme Court promulgated the Rule of Reason in 1911. As this group sees it, the Rule of Reason caused the court to sanction mergers, if in its

judgment their monopolistic power was offset by advantages assumed to be passed on to the public. An extreme section of this group goes so far as to charge that the Rule of Reason caused the Court to cease to enforce the Sherman statute, that the Court took unto itself the power and assumed the benevolent role in each particular case of deciding whether the net balance of public benefits offset the evils of monopoly.

Some other thinkers lay great stress upon the majority opinion in the *U. S. Steel case* (1920). In this case Justice McKenna, writing the majority opinion for the Court, declared that size per se was never illegal. Only when size was accompanied by an unlawful overt act, such as inducing or coercing competitors to fix prices did such large size become illegal. Justice Day, on the other hand, contended that size per se could be illegal and was in the case of the United States Steel Corporation—that where a corporation attained dominancy in an industry and possessed tremendous financial strength this power was unlawful whether benevolently or malevolently employed.

Senator BORAH. Before you depart from the *Steel case*, I would like to put in the record the statement that the majority opinion was rendered by four members of the Court, which was a minority of the Court. Justices McReynolds and Brandeis did not sit.

Mr. BALLINGER. Many students feel that Justice McKenna's opinion legalized the "follow-the-leader" type of monopoly, whereas if Justice Day's opinion had become law the Government would be able to reach this kind of monopoly. It is found in many industries today—industries where smaller units are tossed a few crumbs in return for which they prudently observe their feudal obligations. The small-business man knows that the Sherman statute is one thing in theory and quite another in practice. To bid for business against the giant corporation would mean a retaliation. Such retaliation would, of course, be unlawful. Little-business men know from bitter experience that the stopping of such retaliation by action of the Government takes time. Sometimes it takes many years. And while the mills of justice are grinding slowly, the little fellow is ground up. In many cases he could not possibly hang on until relief was given him by the Government. So he wisely sits quietly at the foot of the table and accepts the one-sided carving of the turkey.

I am not opposed to size which is exposed to competitive restraint. Even if solely through efficiency one corporation could eliminate all competitors the resulting monopoly could not be justified by sound capitalistic economics. But size due to the employment of predatory or uneconomic business practices, size which maintains itself because it can intimidate competitors and muzzle competition, is size which has no justification whatsoever. In many cases the remedy for this kind of size will not mean that the Government must take a good-sized hammer in its hand and attempt to pulverize a number of large corporations. If we will make it a very risky business for one corporation to attempt to punish another corporation which desires to compete with it, a recrudescence of competition in many fields of industry will speedily determine the useful limits of size. If little-business men in many industries can be given protection from retaliation if they choose to challenge the price structures of giant corporations, I believe that size will very quickly adjust itself so that such size will be founded on genuine efficiency and capitalistic ability.

Of course, there are other points at which little-business men must be given a fair break, aside from being protected in the right to compete. If, however, we make the competitive struggle a fair game all around, corporate size will cease to stifle business.

In connection with that decision of Justice McKenna's, I want to point out some other things. Before New Jersey legalized holding companies and thereby made the sky the limit for corporate size, almost every State in the Union had a law against corporate size. I think the maximum limit was \$100,000,000 of assets. At one time, therefore, the American people believed that corporations could become so big as to be dangerous. Now we have been sold the idea there is no danger in the size of a corporation. I think there is danger, both economic and political, where corporations are permitted to become mastodonic. As I say, in many fields of industry today the mere size of a few corporations operates to intimidate smaller units from challenging the prices laid down by the great corporations. Unlimited corporate size is certain to produce a tremendous concentration of corporate power and this concentration of corporate power not only facilitates violations of the spirit and letter of the antitrust laws but menaces democracy. All through history other peoples have been afraid of size and often when size triumphed there was disaster.

Modern capitalism began as a rebellion against the feudal system in England. Historically it is supposed to have begun in little English towns. Early in this evolution the towns imposed regulations upon businessmen so that competition could be preserved and protected. These regulations forbade a man to sell his product except in a designated market place where he would be subject to all the good influences of competition; forbade a man to buy his materials except in an open market place where the free play of supply and demand would hinder him from getting preferential treatment; forbade any businessman from cornering the supply of a product. Particularly important, the amount of capital a businessman could acquire was limited. There was a great fear of concentrated wealth and of the power that went with it. The inhabitants of the towns lived too close to the feudal system not to be impressed with the dangers of concentrated wealth. Now capitalism was temporarily destroyed in these English towns. The regulation against business size was nullified. Then a few superwealthy men swept aside the laws intended to protect competition. The concentration of wealth and power which ensued established monopolies which oppressed consumers and ruined labor.

The Greeks had a very good custom. On a question being raised as to whether a certain rich man was a menace to the State because of his wealth and power, a jar was set up in the public square, and the voters would write in the shell or ostrakon whether they thought he was a menace or not. If he was elected, he was thrown out of Athens and his property confiscated by the State or divided up among the people. Sometimes I think America could use such tactics to an advantage.

Senator AUSTIN. Will you permit a question at this point?

Mr. BALLINGER. Certainly.

Senator AUSTIN. Have you observed that the operation of that theory resulted in the handing of the hemlock cup to a very wise and great philosopher?

Mr. BALLINGER. In what way, Senator?

Senator AUSTIN. In the killing of Socrates. If you do not know this, Socrates was accosted by a man on the street who could not write, and asked him to write a name for him on the shell with which this man wanted to vote. Socrates said: "What name, sir? I will write it." The man said "Socrates." Socrates said, "Do you know Socrates?" "No." Socrates said "Have you ever seen Socrates?" "No." Socrates then said, "Well, tell me why you want to have Socrates killed." "Oh," he said, "I am sick and tired of hearing him called 'Socrates the Just.'"

Senator BORAH. Have you not got Socrates mixed up with another man?

Senator AUSTIN. That may be. Whom do you suggest?

Senator BORAH. Was it not Aristides?

Senator AUSTIN. We may differ on who it was, but the principle is the same.

Senator BORAH. The principle is correct.

Senator AUSTIN. That is the point.

Senator O'MAHONEY. There are no provisions in this bill for the adoption of the shell.

Senator BORAH. We also have a Constitution that stands in the way.

Mr. BALLINGER. I want to put in the record some of the facts that show the enormous concentration in the business world today.

The following facts are summarized from various sources dating from 1926 to 1931. They present a picture of the greater part of American business:

Five percent of water power companies controlled 75 percent of developed waterpower.

Five percent of anthracite companies owned 78 percent of recoverable tonnage.

Five percent of bituminous companies owned 60 percent of recoverable tonnage.

Five percent of iron and steel companies owned 95 percent of iron ore reserves.

Five percent of copper companies owned 55 percent of copper reserves.

Five percent of petroleum companies owned 50 percent of petroleum reserves.

Five percent of farms controlled 45 percent of farm acreage.

Five percent of mining companies produced 60 percent of mine products.

Five percent of manufacturing companies produced 65 percent of value of manufactures.

Five percent of wholesale establishments did 45 percent of wholesale business.

Five percent of retail establishments did 45 percent of retail business.

Five percent of service establishments did 52 percent of service business.

Five percent of hotels did 54 percent of hotel business.

Five percent of all corporations owned 77 percent of corporate assets.

Five percent of all corporations received 86 percent of corporate income.

Five percent of individuals owned 68 percent of individual wealth.

In 1929 the Brookings Institution showed in a study that one-tenth of 1 percent of all the families in the United States (approximately 27,500,000) received as much income as 42 percent of the families at the lower end of the line.

The International Nickel Co. owned 90 percent of world reserves.

The American Telephone & Telegraph Co. owns 80 percent of United States telephone service.

The Western Union Co. had 75 percent of United States telegraph service.

The Ford and General Motors Cos. had 75 percent of United States production.

The International Harvester Co. had 50 percent of United States production.

The Pullman Co. had a practical monopoly.

The Aluminum Co. had a practical monopoly.

The Singer Sewing Machine Co. dominated the field.

The Radio Corporation of America dominated the field.

Senator BORAH. Would you say it is a monopoly? What is your definition of a monopoly?

Mr. BALLINGER. There are two kinds of monopolies. The first is where one concern in the field controls the price or the production of the product. Then there is the case where the field is split between two or three concerns, and they get together and limit production and fix prices. There is a third kind where a few gigantic concerns lay down the prices, and the little fellow obeys that. He is afraid to challenge it.

Senator BORAH. The result is that either a single monopoly or two or three together may control the market.

Mr. BALLINGER. Yes.

Senator O'MAHONEY. You may proceed.

Mr. BALLINGER. The American Sugar Refining Co. dominated the field.

In anthracite coal, eight companies produced from 75 to 80 percent of United States tonnage.

In steel, nine companies had 80 percent of United States mill capacity—United States Steel, Bethlehem Steel, Republic Steel, Jones & McLaughlin Steel, Youngstown Sheet & Tube, National Steel, Inland Steel, American Rolling Mill, Wheeling Steel. Two companies, United States Steel and Bethlehem Steel, had over 50 percent of United States mill capacity. One company, United States Steel, had 40 percent of United States mill capacity.

In insurance, 10 companies had 66 percent of the business—Metropolitan Life, Prudential, New York Life, Equitable Life, Travelers, Mutual Life of New York, Northwestern Mutual, Aetna Life, John Hancock Mutual, Mutual Benefit. In 1929 Metropolitan Life Insurance Co. and the Prudential Life Insurance Co. wrote over 30 percent of the new premiums.

In bread, four companies had 20 to 25 percent of United States production—Continental Baking Corporation, General Baking Corporation, Ward Baking Corporation, and Purity Bakeries Corporation.

In crackers and biscuits, one company, National Biscuit Co., produced more than half of the national output, while two companies,

National Biscuit Co. and the Loose-Wiles Biscuit Co. accounted for between 60 and 70 percent of national production.

In meat packing, two companies had 50 percent of United States production—Swift and Armour.

In cigarettes, three companies had over 80 percent of United States production—American Tobacco Co., R. J. Reynolds Tobacco Co., Liggett & Myers Tobacco Co.

In electric power, three groups generated one-half of the electric power generated by the larger power companies in the country—United Corporation, Electric Bond & Share, and the Insull interests.¹

Two-thirds of the electrical energy generated was controlled by six groups—United Corporation, Electric Bond & Share, Insull Interests, North American, Consolidated Gas, Byllesby-United States Electric Power Corporation.¹

In electrical equipment, two companies had 50 percent of United States production—General Electric and Westinghouse.

Eastman Kodak and Ansco control the photographic supply business in the United States. Eastman controls about 90 percent.

In the manufacture of steam locomotives, two companies dominated the field—the Baldwin Locomotive Works and American Locomotive Co.

Three can manufacturing companies—the American Can Co, the Continental Can Co., and the National Can Co.—manufactured 90 percent of the cans used by packers in the United States.

Three companies dominated the production of flat glass and plate glass in the United States—Pittsburgh Plate Glass Co., Libby-Owens-Ford Co., and American Window Glass Co.²

Two sulphur companies controlled practically all the sulphur produced in the United States—the Texas Gulf Sulphur Co. and the Freeport Texas Co.

The four big tire companies—Goodyear Tire & Rubber Co., B. F. Goodrich & Co., United States Rubber Co., and Firestone Tire & Rubber Co.—manufactured 40 percent of renewal tires and practically all original tires in 1926.

In yeast, two companies dominated the field—Standard Brands and Anheuser-Busch. It is estimated that Standard Brands produced from 66 to 80 percent of all the yeast produced in the United States.

In salt, four companies dominated production of this article—Morton Salt Co., International Salt Co., Worcester Salt Co., and Pennsylvania Salt Co.

In paint, two companies dominated the field—the du Pont outfit and the Sherwin-Williams Co.

In banking, 1 percent of the banks had 46 percent of the banking resources; 21 banks had over 22 percent of banking resources; 1 percent of the banks had 75 percent of commercial bank deposits.

Control of banking resources by 1 percent of the banks through interlocking directors and other methods was much greater. One estimate by competent economic authority reached as high as 99 percent.

¹ Aggregate energy generated by smaller companies estimated in 1929 to have been approximately 12 percent of the total energy supplied for the United States. It is estimated, therefore, that the larger companies generated approximately 88 percent of electrical power.

² In 1915 practically all the remaining independents in the glass industry were consolidated into a fourth company, the Fourco Co., so that today the production of all flat and plate glass in the United States is in the hands of only four companies.

In the manufacture of chemicals, three companies dominated the field—E. I. du Pont de Nemours Corporation, Allied Chemical & Dye Corporation, and Union Carbide & Carbon Corporation.

In motion pictures, three companies dominated the field—RKO, General Theatres Equipment, Inc., and Paramount-Publix Corporation.

In aviation, three companies dominated the field—United Aircraft & Transport Corporation, Curtiss-Wright Corporation, and Fokker Aircraft Corporation—the General Aviation Corporation absorbed the Fokker Aircraft Corporation and the Dornier Co., in both of which General Motors had a large interest in 1930.

In natural gas four producer groups—Electric Bond & Share Co. group, Columbia Gas & Electric Co. group, Cities Service group, and Standard Oil Co. of New Jersey—accounted for about 72 percent of the output of natural gas produced by 32 other holding-company groups.

In lead smelting, one company, the American Smelting & Refining Co., had over 55 percent of the total lead-smelting capacity of the Nation.

In the production of lead, four companies produced over half of the total production—American Smelting & Refining Co., St. Joseph Lead Co., National Lead Co., and the Bunker Hill & Sullivan Co.

Four companies produced over 50 percent of all the copper produced in the United States—Anaconda Copper Mining Co., Kennecott Copper Corporation, Phelps-Dodge Corporation, and Calumet & Arizona Mining Co.

In the manufacture of cash registers the National Cash Register Co. dominated the field.

Two companies—E. B. Muller & Co. and Heinr. Franck Sons, Inc.—dominated the field in the chicory business. It really amounted to one company, because the president of one company is the wife of the president of the other.

I would like to make this brief comment. The vigorous pioneering American who has saved up a little capital and would like to go in business for himself can look over these figures and hunt for some line of activity that offers a chance for free initiative and individual enterprise. If he wants to live, he had better forget about free initiative and start hunting a job.

Senator BORAH. I would like to have the names of these corporations put in the record. There has been a good deal of criticism that corporations are not named, but we talk in general terms. I would like to have a list put in the record.

Mr. BALLINGER. I will be glad to furnish the names of as many corporations as possible. Where I have used percentage figures there are some cases where a furnishing of the names of the corporations constituting the percentage would involve considerable work and I may not be able to devote the time necessary to do this. I will, however, do all I can to meet the Senator's request.

Senator O'MAHONEY. The names of the corporations suggested by Senator Borah may be incorporated in the record at this point.

Mr. BALLINGER. I want to call to your attention another very significant fact. In 1932 Mr. Berle and Mr. Means published a very sensational book in which they showed that about 200 corporations control nearly 50 percent of corporate assets.

Senator BORAH. Two hundred outside of the banks?

Mr. BALLINGER. Outside of the banks.

Senator AUSTIN. And the 60 families?

Mr. BALLINGER. And the 60 families. I will stay away from the 60 families as much as I can. I would rather talk about dry statistics.

The amazing thing is that since that book was published we have had a series of mergers among the big corporations. Among the 200 referred to there have been a number of consolidations and mergers. I will give you a few examples.

Berle and Means in their book on "Modern Corporations" reported that on January 1, 1930, the Prairie Oil & Gas Co. had assets of \$209,000,000 and was merged with the Prairie Pipe Line Co. The Sinclair Consolidated Co. in 1932 is reported in the book of Berle and Means as merging with the Sinclair Consolidated Oil Corporation. Then the Prairie Pipe Line Oil & Gas Co. was merged with the Sinclair Consolidated. That one merger eliminated two of the 200 corporations controlling nearly 50 percent of the corporate assets.

Senator BORAH. In what State was that organized?

Mr. BALLINGER. I think in the State of Delaware. I am not sure.

Senator BORAH. All right.

Mr. BALLINGER. The Union Oil Associates was reported by Berle and Means as having assets estimated on or about January 1, 1930, of \$240,000,000. On December 20, 1932, the Union Oil Associates was merged with and into the Union Oil Co. of California. The Union Oil Co. of California had been incorporated October 17, 1890, in California and on December 31, 1931, had assets, according to Moody's Industrials, of \$202,186,441. Thus the Union Oil Associates, one of the 200 giants reported by Berle and Means, within 2 years after their book was written had merged with the Union Oil Co. of California and the assets brought under a common control had practically doubled (a \$442,000,000 corporation).

The Vacuum Oil Co. was reported by Berle and Means as having assets of \$205,700,000 on or about January 31, 1930, and the Standard Oil Co. of New York was reported as having assets of \$708,400,000 on or about January 1, 1930. In 1931 the Vacuum Oil Co. and the Standard Oil Co. of New York merged and the name of the new corporation was "Socony-Vacuum Corporation." Thus two more corporations in the 200 reported by Berle and Means in 1930 had been merged into one corporation a year later and brought together under one roof a new corporation with assets of nearly a billion dollars.

I will file the rest of this.

Senator MAHONEY. Very well.

On page 20 of their book, Berle and Means report the Sinclair Crude Oil Purchasing Co. as having assets of \$111,900,000 on or about January 1, 1930.

In September 1932, the Standard Oil Co. of Indiana, reported by Berle and Means on or about January 1, 1930, as having assets of \$850,000,000, which formerly had a 50-percent interest in the Sinclair Crude Oil Purchasing Co. and the Sinclair Pipe Line Co., acquired the remaining 50 percent in both these companies from the Sinclair Consolidated Oil Corporation, which in the same year became the Consolidated Oil Corporation. This remaining 50-percent interest was obtained by the Standard Oil Co of Indiana for a cash consideration

of \$72,500,000 and the names of the acquired companies were changed to Stanolind Crude Oil Purchasing Co. and Stanolind Pipe Line Co.

Thus two of the 200 corporations listed by Berle and Means were absorbed by one of the remaining giants.

On the other hand, some of the corporations listed by Berle and Means have apparently been growing at a tremendous rate since their book was printed. Such growth did not involve an absorption of any of the 200 giant corporations mentioned by Berle and Means. These 200 giants can grow in either of two ways. They can grow by absorbing one another, or they can grow by continuing to make successful raids on smaller corporate fry. And if the pickings are not good enough in the United States, they can and often do look the rest of the world over. I wish to mention the expansion of the International Telephone & Telegraph Corporation, since Berle and Means' book was written. This corporation was reported by Berle and Means as having assets of \$521,200,000 on or about January 1, 1930. In the year 1930 alone this corporation made the following acquisitions to its already far-flung empire:

Compania Peruana de Telefonos, Limitada (big telephone company in Peru).

Compania de Telefonos de Chile.

International Marine Radio Co., Ltd. (handles radioelectric communications between land and ships).

Creed Telephonapparat (manufactures Creed high-speed telegraph printer equipment in Germany).

Standard Elektrizitats Gesellschaft (manufactures telephone apparatus and supplies in Germany with five big subsidiaries in Germany).

Controlling interest in C Lorenz, ag Vienna (manufactures telephone, telegraph, and radio apparatus).

Aktieselskabot Skandinaviska Kabel—Og Gummifabriker of Oslo, Norway (manufactures cables and wire).

Set up the Shanghai Telephone Co. in China.

Organized the Societatea Anonima Romana de Telefoane to operate telephone system of Rumania.

In 1931 it acquired Federal Telegraph Co. and assets of the Kolster Radio Corporation at public auction.

I would like to submit to this committee some more facts about the concentration of corporate wealth in the United States. These figures are taken from data published by the Department of Internal Revenue.

The total number of corporations in the United States for 1933, which were the last available statistics, was 504,080. Of this number, 446,842 were active corporations. 58,278 did not file balance sheets with the Bureau of Internal Revenue for 1933. But that these corporations were small corporations is evidenced by the fact that 66 percent of these 58,278 corporations reported net profits or net deficits of \$1,000 or less, while 90 percent reported net profits or net deficits of \$5,000 or less. The number of active corporations filing balance sheets with the Bureau of Internal Revenue for 1933 was 388,564. They represented approximately 87 percent of the total active corporations in the United States for 1933.

Of the 388,564 corporations filing balance sheets in 1933 with the Bureau of Internal Revenue, 267,791, or 68.9 percent, had assets of \$100,000 or under; 324,536, or 83.5 percent, had assets of \$250,000

or under. Now, the 267,791 corporations which reported individual assets of \$100,000 or less had together aggregate assets of only \$7,882,101,000, or only 2.93 percent of all corporate assets reported to the Bureau of Internal Revenue in 1933. The 324,536 corporations which filed balance sheets in 1933 showing individual assets of \$250,000 or less had together aggregate assets of only \$16,873,863,000, which represented approximately 6.3 percent of all corporate assets reported to the Bureau.

On the other hand, 594 corporations (approximately 0.15 of 1 percent of all corporations filing balance sheets in 1933 with the Bureau of Internal Revenue) reporting individual assets of \$50,000,000 or over had approximately 53 percent of all corporate assets reported in 1933.

Two thousand, four hundred and seventy-nine corporations (approximately 0.6 of 1 percent of all corporations filing balance sheets with the Bureau of Internal Revenue) reporting individual assets of \$10,000,000 or over had approximately 68 percent of all corporate assets reported in 1933.

Five percent of all corporations filing balance sheets with the Bureau of Internal Revenue for 1933 was approximately 19,428. The 20,663 corporations reporting individual assets of \$1,000,000 and over to the Bureau of Internal Revenue in 1933 had 85.5 percent of all corporate assets reported in this year.

Senator BORAH. One question, Mr. Ballinger. You spoke about the pipe-line company. What do you know about pipe lines? What part do they play in the oil industry?

Mr. BALLINGER. They play a major role in the oil industry. I have some confidential information about them, but I would not like to disclose it in public.

Senator BORAH. All right.

Mr. BALLINGER. Personally, Senators, I have always believed that that old statute of Senator John Sherman was pretty soundly drawn, except in one vital particular. I think that the growth of monopoly since it was passed has not been due so much to any judicial misapplication of the Sherman statute as to other more fundamental causes. First, there has been only a sporadic enforcement of it. Its nonenforcement has been far more political than legal or economic.

Secondly, many cases have not been properly presented to the Supreme Court. Important economic data has been sadly missing. For instance, I think that if pertinent economic data and argument had been assembled and presented to the Court regarding the illusory advantages of mergers, the Supreme Court would have in many cases rendered a judgment of guilty. For many years propaganda in favor of mergers has overwhelmed the voices of economic experts and industrial engineers who have challenged this propaganda with very impressive scientific data.

I would like to put in the record some interesting information that arose out of the case of the Federal Government against the International Harvester Corporation. The Harvester Corporation in 1918 took a consent decree. This consent decree was very severely criticized by the Federal Trade Commission in 1920. In 1923 the Government decided to reopen the case in Wisconsin. When it was reopened the comptroller of the company introduced sworn evidence showing the cost of producing steel bars at the steel plant of the Harvester Cor-

poration in Chicago. This steel plant of the Harvester Corporation was a very small one compared to the steel plants of the great steel corporations. In 1923 it happened that the Federal Trade Commission was investigating the United States Steel Corporation, an investigation which culminated in a cease and desist order against the so-called "Pittsburgh plus" system of the United States Steel Corporation in 1924. The Commission obtained information from the steel corporation showing the cost of producing steel bars, the same kind of steel bars produced by the Harvester Corporation in its little Chicago plant. We found that the Harvester Corporation was producing these steel bars for from 16 to 19 cents less a ton at its plant than they were being produced at the great Gary mills of the United States Steel Corporation, which mills were supposed to be the largest and finest in the world. This is an example of what little business can do.

Senator AUSTIN. Did you stop to consider in your comparison the service to general welfare by industrial corporations handling commodities such as steel bars?

Mr. BALLINGER. I am just showing that a very much smaller mill produced them more cheaply.

Senator AUSTIN. That is all? But you must take into account, must you not, the service to the world in the production of steel bars in addition to the difference in cost?

Mr. BALLINGER. No; that was the selling cost. I am just talking about the mill cost.

Senator AUSTIN. You do not get the point of my question. The point of my question is that, in performing the service of the production of goods such as steel bars you must take into account the performance of the service of the great companies that can do that as against the inability of the smaller companies to anywhere near answer the request for service.

Mr. BALLINGER. Senator, as I understand it, the argument is that size results in lower costs. This is supposed to be the justification of size. In the case which I have presented the great Gary mills could not hold their own against the little steel plant of the Harvester Co.

Senator AUSTIN. Is that the only point you are making?

Mr. BALLINGER. Yes; I am making that point.

Senator AUSTIN. All right.

Mr. BALLINGER. Let me give you a perfect example of the failure of the prosecution to properly present the facts to the Supreme Court. In 1920 the Supreme Court refused to hold that the United States Steel Corporation was a monopoly. Its principal reason for so holding was that though this corporation had engaged in conspiracies with its competitors to fix prices prior to 1911—the date on which the Gary dinners were abandoned—that since that date it had ceased such conspiracies, was guiltless of employing monopolistic practices, was in short an exemplary corporation. What the Court failed to know was that the steel corporation since 1911 had utilized one of the most effective monopolistic devices known—the basing point system. The prosecution of this case for the Government presented no data whatsoever on even the existence of the basing point system.

Two years after the acquittal of the Steel Corporation in 1920 the Federal Trade Commission began an investigation of the Pittsburgh-plus system. In 1924 the Commission issued a cease-and-desist order against the Steel Corporation and the Steel Corporation aban-

doned the Pittsburgh-plus system. Promptly thereafter the industry as a whole adopted the multiple basing point system, the Pittsburgh-plus system being a single basing point system. The Commission found, and so stated in its findings, that the Steel Corporation had engaged in conspiracies to fix prices since 1919 and had continued to engage in conspiracies up to 1922. The legitimate inference from this finding is that such conspiracies existed between the period of 1911 and 1920.

It has been the experience of the Federal Trade Commission that basing point systems do not work automatically. They have to be policed, and the policeman is a fear of concentrated financial might. The Commission made a complete exposure of the operation of the Pittsburgh-plus system. You see, the Federal Trade Commission was staffed with economic experts. It had the machinery for unearthing economic data and effectively interpreting such economic data. Had the Department of Justice had at its disposal an economic staff comparable to that of the Federal Trade Commission when it tried the Steel Corporation in 1920, I think the outcome of the *Steel case* in 1920 would probably have been different.

Senator AUSTIN. May I ask you whether, on the whole, you regard it as in the interest of the public to eliminate geographical position as a substantial element in competition?

Mr. BALLINGER. No. I do not want to eliminate geographical advantage. I am very much in favor of it. I think the man next door to a mill should get his product at a less cost than the fellow who is 500 miles away.

Senator AUSTIN. And the man who has planned his home in the vicinity of certain production is entitled to have the benefit of that choice, in his freedom to select the place where he lives?

Mr. BALLINGER. Yes.

Senator AUSTIN. And if this bill proposes to eliminate geographical position as a substantial element, in that respect it is bad, is it not?

Mr. BALLINGER. If it did that I would say it is bad. However, I do not think it does that.

Senator O'MAHONEY. Has not the geographical advantage of which the Senator speaks been removed by the present system that is practically universally followed by the large concerns?

Mr. BALLINGER. The basing point system; yes.

Senator O'MAHONEY. What other method would explain the fact that the prices of so many commodities are practically identical?

Mr. BALLINGER. That is the operation of the basing point system. A cement mill, for instance, will give a man located 500 miles away a lower price on cement than the man next door to the mill has to pay.

Senator O'MAHONEY. Has geographical position operated to make it possible for a cement manufacturer who is operating near the source of supply to sell cheaper than the Cement Trust, or do you know?

Mr. BALLINGER. The *Cement case* is now in the course of trial, and some very sensational evidence has been introduced which I may be able to submit to you later. We have evidence showing an amazing identity in prices.

Senator O'MAHONEY. The present system employed by industry has absolutely destroyed geographical advantage, has it not?

Mr. BALLINGER. Yes; I would say it certainly has not facilitated it.

Senator O'MAHONEY. You have demonstrated by the figures which you have presented here, which I presume are accurate, that in many

lines of business there has been a tremendous concentration of wealth and power.

Mr. BALLINGER. That is true.

Senator O'MAHONEY. You may proceed.

Mr. BALLINGER. Finally, the most important reason why the Sherman statute has been ineffective is, in my opinion, because the penalties provided for its infraction have been seriously inadequate. Whatever we may do with this statute, it is at this point that reform should strike first. I believe that in reforming the penalties provided for in the Sherman statute we will add more to its effectiveness than anything else we can do.

Senator AUSTIN. Does that idea involve prison sentences for executives or managers, or does it apply only to those penalties which can be paid by the corporation?

Mr. BALLINGER. Senator, I hesitate to go into that, because I understand that in executive session you may make some amendments to the bill. I do not want to discuss that point.

Senator AUSTIN. Very well. I respect your reticence on that.

Mr. BALLINGER. Senators, the genius of the capitalistic system is supposed to be that what a man can make by the application of skill, efficiency, industry and honesty he is justly entitled to. The genius of the feudal system, which modern capitalism destroyed, was that what a man could take by force at the point of the lance or sword was justly his.

Now, the fundamental trouble with American capitalism for the last 70 years has been the employment of predatory methods, instead of the basic capitalistic ones of skill and efficiency, in the reaping of profits. I believe, Senators, that the flourishing of such predatory methods has seriously crippled capitalism in the United States. Indeed, I believe that for many decades in the United States capitalism has been on the wane. Capitalism, Senators, is nothing more or less theoretically than a system of relatively free markets where anyone can sell his labor or his products according to the laws of supply and demand. Reasonable freedom of initiative and a fair chance to compete in the market place is the essence of capitalism. Today great areas of business are no longer governed by the laws of supply and demand. It has become increasingly difficult for enterprising businessmen to get into many markets on any terms. And in many markets it has become increasingly difficult for businessmen to risk practicing the fundamental capitalistic virtues of efficiency, skill, or enterprise.

Predatory methods in business have been largely responsible for concentrating in a few hands today enormous economic power, which power has time and time again been abused so as to destroy or hinder true capitalistic enterprise. Predatory methods are largely the cause of the domination by a few corporations of so many fields of industry today. They have been the most active agent in bringing about a dangerous concentration of financial power so that a few men control the lives of many businessmen by strategic positions at the switchboard of private credit. Finally, such predatory methods have brought about a dangerous concentration of wealth and income in the United States.

In the *Florida Chain Store case* Justice Brandeis quoted from the bench the belief of many economists that the concentration of income in the United States had been a major factor causing the crash of 1929.

A great many eminent people have testified to the truth of these statements—the elder La Follette, Theodore Roosevelt, Elihu Root, Woodrow Wilson, Justice Brandeis, Samuel Untermyer, William Jennings Bryan, and Ccl. Charles H. March of the Federal Trade Commission.

Only a few years ago Judge Edwin C. Parker, chairman of the board of directors of the United States Chamber of Commerce, in a notable address at the annual meeting of that body, boldly declared that the times demanded "straight thinking and straight talking." "They demand," he said, "that we consider the disturbing evidences of a business atavism, a throwback to a day of unrestrained individualism, a day of the public be damned, when men of great business ability with an eye singly to their own selfish interests and immediate returns and without regard to the future, ruthlessly pursued their predatory lusts in a spirit of 'after me the deluge.'"

That was not so many years ago.

Now, Senators, the decline of capitalism in the United States has not been the work of men who plot in dark rooms below Fourteenth Street in New York City. It has not been the work of bureaucrats in Washington. It has been the achievement of gentlemen who have been plotting in the Wall Street area for the last 50 years. I call them toll-takers because they are not interested in practicing capitalism but in perfecting techniques for applying the feudal art of seizing by force the property of other people. Historically these freebooters are of the same breed which undermined Roman democracy. The death of a capitalistic order is foreshadowed by the increasing success of bold men who have managed to get outside of the system and are permitted by democratic government to cheat, force, and maneuver more honest men out of their property.

The businessman who really practices capitalism—that is, furnishes society with a useful product or service which he makes under conditions of fair competition—is likely to find the road to fortune a slow and tedious road and his harvest a very modest competence. But if a businessman can step outside of the capitalistic system, shake off the handicaps of a conscience and devote his talents to suppressing capitalism he can rise like an eagle above a turtle.

Innumerable Government investigations extending back over a period of 50 years testify convincingly to the increasing decay of capitalism and the triumph of business which has seceded from the capitalistic system to prey upon trade. When Morgan, the elder, got control of the New York, New Haven & Hartford Railroad, bought up junk lines and compelled the road to buy them at profitable prices to himself and his confederates—a policy that permanently destroyed the prosperity of the New York, New Haven & Hartford—Mr. Morgan was not acting as a capitalist. The foundation of the great Whitney fortune was a classic example of successful secession from the capitalistic system. William C. Whitney and Thomas Fortune Ryan organized the Metropolitan Street Railway Co. and bought up a number of rundown horsecar lines, which they heavily capitalized. A line on Fulton Street with a third of a mile of track, 10 little cars, and 30 starved horses, and an operating deficit of \$40,000 a year, was put in as worth \$1,000,000. A line on Columbus Avenue, bought for \$500,000 by Ryan and Whitney, was capitalized in the Metropolitan for \$6,000,000. There were some really good street-car

lines on the north and south traffic arteries of the city but they belonged to old families who did not care to sell. Whitney and Ryan were able, however, to secure a lease of these lines by guaranteeing larger dividends to the owners. They then borrowed enough money from the bank to pay the guaranteed dividends for the first year or two while they were unloading the stock. This was a favorite trick of Chicago Yerkes.

Metropolitan listed on the New York Stock Exchange, started at par, \$100 a share, and soon soared to \$269 a share. The investors fought to get it, while behind the scenes the partners cheerfully unloaded. Not a single share of Metropolitan was found in the \$40,000,000 estate of William C. Whitney when he died in 1904. The investors, of course, lost their money. That is where the \$40,000,000 came from.

When Whitney did all this, he was not practicing capitalism. He had set up a private economic system. When Albert Wiggin made 6 to 10 million dollars gambling with the funds of his own bank depositors and a certain gentleman and his buddies worked their notorious radio pool cleaning up the investors to the tune of \$5,000,000 in 2 weeks, both had leaped well clear of the capitalistic system. If one doesn't mind thinking of filling station attendants as plumed knights with lances levelled at one's midsection when one buys gas, there are up-to-date government records which reveal how great oil corporations fix prices and knock little men over the head who are rash enough to think that the oil industry is part of the capitalistic system. The model barony of petroleum, however, is only a fragmentary part of the business world which has seceded from the capitalistic system. The dull pages of countless government investigations tell how it is done through innumerable predatory practices.

During the last 4 years the New Deal, through a series of investigations, has shed a flood of light on how men grew quickly rich by resigning from the capitalistic system and making war on it. The investigations of the last 4 years are only part of a comprehensive literature reposing on the shelves of the Government Printing Office in Washington or in the archives of municipal or State legislatures which have been keeping track of American toll-takers for nearly one hundred years. Since the Civil War businessmen have been marching on to vast fortunes in the United States. But these fortune builders, Senators, were generally not Horatio Algiers who worked honestly and capitalistically to merit their riches. They were enemies of capitalism and democracy who found ways to get outside the capitalistic system, control democracy and rake in the loot. By plundering the national domain, robbing the Government in war and peace, building monopolies, securing excessive tariffs, rigging stock markets and produce exchanges, selling worthless securities, lying to the consumer about patent medicines, and myriad other forms of shoddy; evading taxes, betraying stockholders, and enmeshing free markets in gigantic spider webs woven of holding companies, interlocking directors and the control of bank credit, many rich and powerful men having been doing their best to feudalize capitalism in the United States.

The massive fortunes of \$100,000,000 and a billion dollars and many of the smaller ones, have generally been the reward not of unique talents but of unique chances for hoarding up the public.

Senator George G. Vest, of Missouri, once exclaimed on the floor of the United States Senate in reference to the Horatio Alger activities of Vanderbilt, Astor, Jay Gould, Harriman, Huntington, J. P. Morgan, and other great fortune builders, "When they speak, they are lying. When they are silent they are stealing." Any intelligent American can quickly convince himself by a little patient reading that the ruling families of America today, generally starting with some one great, vital, red-blooded cutthroat who went boldly forth and took whatever he might require, have developed from generation to generation, tending to adopt more gentlemanly methods of acquiring other people's property, and at last becoming very much like the ruck of educated Americans, except for the fact that they own most of the United States.

Fifty years of uncapitalistic business in the United States has entrenched within our capitalism a prospering feudal order. Feudalism is the power of wealth to rob the business world. Capitalism in its pure form is a competitive system of industries and merchants buying and selling in a free price system ruled by the laws of supply and demand. Whoever can make the best mousetrap can get the business. Feudalism devours capitalism by seizing markets through the power of money and predatory business practices, destroys free enterprise, and takes tribute at every corner.

Predatory business in the United States has long been the greatest cause of unemployment. Resolute men have long known that more money can be made by standing in the way of business than by letting business go ahead. The repression of business pays handsomer dividends than the honestly traveled road of competitive success. But such repression throttles the economic machine down and unnecessary unemployment is the direct consequence. Unless, therefore, we prevent certain gentlemen from standing across the channels of trade and taking toll and increasing the size of this toll year by year, we are never going to reach that paradise of plenty which our natural resources, our tremendous man-power, the capability of our business leaders and our vast scientific and cultural resources entitle us to.

The most predatory, profitable method of employing force for the conquest of riches in American capitalism has been to violate the antitrust laws. I have always believed that economic murder is committed when one group of businessmen through the application of brute financial force or marketing strength can flout the antitrust laws and destroy the livelihood and the thrift of another group of businessmen. The victims may be entitled to stay in business by all laws of efficiency and sound capitalistic economics, but skill, efficiency and enterprise are hopeless weapons of defense when opposed by sheer financial might or unlawful group action.

The 48 years in this country we have been trying to deter economic murderers with 10-cent penalties for each mass killing. The Sherman law provides a fine of \$5,000 for any person violating the antitrust laws, and a prison sentence of 1 year for the officers of the corporation which violated the antitrust laws, or both. The choice of which penalty shall be applied is, however, discretionary with the court. I know that prison sentences have been meted out to certain underworld characters. I believe the Department of Justice secured jail terms for the racketeers who organized the so-called poultry racket in New York some years ago. But, Senators, I have never heard of a prison

sentence being given for violating the antitrust laws to any businessman, especially one with a fat bank account and social standing. Yet the worst violators of the antitrust laws—the ones that have cost the economic lives of hundreds of thousands of small businessmen—have been committed by men who enjoyed the highest rating in Duns and Bradstreets, and whose names were ones to conjure with when patrons were needed for some social function or cause.

Almost invariably the courts in enforcing the penal provisions of the antitrust laws have relied upon fines. Where an opportunity exists to make thousands of dollars, yea, millions and tens of millions, a \$5,000 fine on corporations who attempt enterprise of this scope, or on the directors of such corporations, has about the deterrent effect of a 10-cent penalty on a Government office worker. Berle and Means say that a corporation with \$50,000,000 in assets is a small corporation in American business. Let it be remembered that the monopolies which have wrecked whole countrysides and may wreck them in the future, have not been and are not likely to be small corporations with limited resources.

Senator AUSTIN. Will you permit a question?

Mr. BALLINGER. Certainly, Senator.

Senator AUSTIN. Do you have with you the number of corporations having a capitalization of \$50,000,000 or more?

Mr. BALLINGER. I can get that for you.

Senator AUSTIN. I wish you would do so, and put it in the record.

Mr. BALLINGER. I will be very glad to do so.

Senator O'MAHONEY. You may proceed.

Mr. BALLINGER. The pursuit of antitrust violators by the law since 1890 has been little short of pitiful. It took 22 years to catch up with the old Standard Oil trust. During that time the trust turned out about 20 of the richest men in the United States and probably America's first billionaire. It had corrupted our courts, bribed our legislators, and stabbed to death thousands of small businessmen who had crossed its path.

Senator AUSTIN. That is figuratively speaking, I suppose.

Mr. BALLINGER. Yes. I mean their economic lives were terminated by selling below cost and other predatory and uncapitalistic practices.

A quarter of a century later—1937—the Government has again caught up with another oil trust. The decree dissolving the old Standard Oil trust in operation was, in the opinion of distinguished economists, a farce.

Nineteen years went by before the great United States Steel Corporation was brought before the highest court of the land. And then we let it go, though monopoly masquerading in the form of an intricate and little understood single basing point system was operating full blast. The Federal Trade Commission 14 years ago successfully attacked the Pittsburgh Plus system of the Steel Corporation, but after its decision the company went into the multiple point basing system and consumers are still paying tribute. Sixteen years elapsed before the Harvester trust was finally up for judgment before the Supreme Court. The International Harvester Co. was organized in 1902, and not until 1912 did the Federal Government initiate proceedings against this company.

In 1914 the district court rendered a decision adjudging the company as having violated the Sherman law and decreeing a thorough-

going and effective procedure of dissolution. On appeal the case was first argued before the Supreme Court in 1915. Two more years slipped quietly by and then the case was placed on the calendar of the Supreme Court for reargument. Twelve months later the case was reargued. Before a decision was handed down the Harvester Co. offered to compromise. It got a consent decree and the Government dismissed its case in 1918. In 1920 the Federal Trade Commission severely criticized this consent decree and charged that the Harvester Co. was still a monopoly. Three years later—1923—the Attorney General began an unsuccessful attempt to reopen the case. Three years later—1926—the higher court decided in favor of the Harvester Co. In all this there was economic tragedy. Before the International Harvester Co. was formed in 1902 the farmers could buy binders for \$110. Last year the farmer was paying \$250 for binders and the Harvester Co. has raised its prices 10 to 20 percent over 1937.

Last year the Harvester Co. made more money than it has ever made since it began. Its net profits for 1937 were \$39,692,763. This was more than the Harvester Co. made in 1929, the year of peak income in the United States.

Senator O'MAHONEY. In what State was it incorporated—do you know?

Mr. BALLINGER. No; I do not know. In 1929 the net profits of the Harvester Co. were \$39,529,998.

Senator BORAH. Do you have figures for the Harvester Co. in 1934 and 1935?

Mr. BALLINGER. Yes. I do not have them here. I will have to send that information to the committee.

Senator BORAH. I think you might send it in for the record.

Mr. BALLINGER. All right.

Senator AUSTIN. Do you know whether those earnings were substantially the same in preceding years?

Mr. BALLINGER. I think they were. I have a note that in 1936 they were \$31,760,372. That was for 11 months. They changed their fiscal year at that time. I think during the depression they had pretty good earnings, but I will send that information to the committee.

Senator BORAH. They did drop down some, but, in my judgment, not very decidedly. I think they were comparatively the same, never ran below \$30,000,000.

Mr. BALLINGER. They were lucky to make anything at that time. As I have already stated, that company, in the face of these enormous earnings, has raised its prices from 10 to 20 percent over 1937.

Senator O'MAHONEY. The information you send may be inserted in the record at this point.

Net profits¹ after deducting Federal income tax of the Harvester Corporation.

1927 ²	\$29,359,215
1928 ²	32,196,674
1929 ²	39,529,998
1930 ²	25,703,192
1931	1,340,538
1932	³ 7,582,879
1933	³ 1,886,257
1934	7,448,537
1935 ²	24,618,238
1936, 11 months ²	31,760,372
1937	39,692,763

¹ The net profits per year of the Harvester Co. shown above represent an adjustment by Federal Trade Commission accountants who added back to the profits reported by the company a provision for inventory reserve. But the profits reported above have not been adjusted for the "extra compensation" referred to in note¹ below.

² Extra compensation of \$23,086,000 was deducted by the company from the profits for a period of 6 years (1927, 1928, 1929, 1930, 1935, and 1936). This \$23,086,000 should be counted as part of the net income of the Harvester Corporation according to accountants of the Federal Trade Commission, and should be added to the total net profits for those years. For 1937 alone over \$5,000,000 was deducted by the Harvester Co. from its net income and according to Federal Trade Commission accountants should be added to the \$39,692,763 above.

³ Denotes loss.

Mr. BALLINGER. Here is an interesting thing: The only farm implement manufactured by the Harvester Corporation which has gone down in price since the time of the inception of the Harvester Co. has been tractors. And the reason for this is that the Harvester Co. has been in competition with automobile companies in the manufacture of this product.

In one case before the Federal Trade Commission, the *International Shoe Co. v. Federal Trade Commission* (280 U. S. 291), the Commission ordered a divestment of the assets alleged to have been unlawfully acquired under section 7 of the Clayton Act in 1925. Three years later the Court of Appeals affirmed this order—November 1928. Two years later the Supreme Court reversed this decision, in January 1930. There was thus a delay of approximately 5 years before a final judicial review of the Commission's order. The defendants escaped in this case because the courts had driven a large hole through section 7 of the Clayton Act, creating a technical distinction between assets and stock in some cases, and in this case by reading Sherman law language into the Clayton statute. If the case had been decided in favor of the Federal Trade Commission, so much time had gone by that an unscrambling of the eggs, the doing of justice by restoring the status quo, would have been practically impossible.

There are Senators present here today to whom all this is, I am afraid, old stuff. You Senators know that it takes years to catch up with a monopoly. You know that often we have not even tried to catch up with it; that the chances of successful conviction have been small, that if conviction by some miracle is likely to ensue corporations have frequently headed off such conviction by the expedient of taking a toothless consent decree.

Senator AUSTIN. You do not think much of the consent decree as a method of control, I judge from your statement.

Mr. BALLINGER. Senator, if a monopoly has been in existence for a number of years and has done enormous damage in years gone by, I would like to see some penalty imposed.

Senator AUSTIN. I ran into that in examining Mr. Jackson when he was a candidate for Solicitor General. The matter of the consent decree of the finance companies was under study. His testimony before the Committee on the Judiciary of the House of Representatives tended to show that the very life of the independent companies was involved in the obtaining of a consent decree, for this reason, as stated by him: That if they were obliged to carry on the prosecution and go through all the stages of appeal, there might be involved 4 or 5 years, during which time the independents would be wiped out. Therefore, the consent decree seemed to be a useful means of expediting matters and getting the control which these various components of the trade deliver to the Government under the terms of the decree. I have been wondering whether the consent decree method of handling such things is a good method or a bad method.

Mr. BALLINGER. I think you brought out very clearly when a consent decree should be used. I tried to bring out the case when I did not think it should be used. When a monopolistic practice is employed and the damage is just getting under way, if the parties employing such practice will agree to stop using it I think a consent decree under these conditions would be helpful. Such decree would have the effect of stopping the damage before it had become widespread. But when the damage has been done and little businessmen have been ruined, I would not stop at a consent decree. I would then insist upon the parties being given a good stiff penalty.

Senator O'MAHONEY. You may proceed with your remarks.

Mr. BALLINGER. That if the decree had any teeth in it, they have been ignored; that even where we have proceeded against giant monopolies and have convicted them that the prosecution proceeded against them only for the purpose of securing a dissolution decree and that not even the slightest effort was made to visit upon the heads of the offenders the criminal provisions of the Sherman statute. You know that, on the few occasions where great monopolies have been convicted, they have gone out of court with no great worries about reviolating the antitrust laws; that there is conclusive evidence to show that they have repeated their offense and have gotten away with it for long stretches of time.

The whole situation proves that. In 1912 the courts declared that the Aluminum Co. had a substantial monopoly of the production and sale of aluminum in the United States and perpetually enjoined it from certain practices. In 1924 the Federal Trade Commission declared after investigation that the Aluminum Co. was still a monopoly and in 1938 another Attorney General is still chasing the Aluminum Trust. The Supreme Court dissolved a tobacco trust in 1911. In 1924 the Federal Trade Commission reported the flourishing of a new tobacco trust but nothing was done about it. Nothing the courts have done to trusts seems to have any effect on prices. Since the conviction in Wisconsin of the latest Oil Trust I have not seen any difference in the price or gas or oil.

Senator O'MAHONEY. One conclusion to be drawn from that, and is drawn by some economists is that the best thing to do is to allow the corporation to proceed without restoring the control.

Mr. BALLINGER. I could not agree with that.

Senator O'MAHONEY. I do not state that facetiously, because the real heart and soul of this question is whether or not competition can

be restored. Some people think it cannot and should not be, and that when the management of an industry falls into efficient hands it should be permitted to continue.

Senator BORAH. There is no other alternative.

Mr. BALLINGER. And more important, how are you going to determine a fair rate of return. The Government would be dragged into a whole lot of price-fixing, which I think would be terrible. I think competition is the best system.

Senator O'MAHONEY. You have been dealing very largely, I suppose, with matters of history, that have transpired in the past, upon which opinion has crystallized one way or the other.

Mr. BALLINGER. Yes.

Senator O'MAHONEY. Do you have any particular cases which the Federal Trade Commission has disposed of, which are now closed, which would illustrate the point you have in mind?

Mr. BALLINGER. Yes; I have a good many. I will give you a few of them. Take the American Sheet & Tin Plate case.

Mr. O'MAHONEY. Is that a Federal Trade Commission case?

Mr. BALLINGER. Yes. A cease-and-desist order has been issued.

Senator O'MAHONEY. When?

Mr. BALLINGER. About a year ago.

Senator O'MAHONEY. Had there been an appeal from it?

Mr. BALLINGER. No; they took a consent decree.

Senator O'MAHONEY. Is that a closed case?

Mr. BALLINGER. Yes.

Senator O'MAHONEY. I would not want to ask you about any pending cases.

Mr. BALLINGER. Well, you never know whether they are pending or not. They will take a cease-and-desist order, and 2 or 3 years later show up with an appeal.

Senator O'MAHONEY. So far as the present record is concerned, it is a closed case?

Mr. BALLINGER. So far as the Federal Trade Commission is concerned, it is a closed case.

Senator AUSTIN. When there is a consent decree the situation is constantly in the hands of the chancellor, is it not, so that at any time a petition for modification may be made by the Government or the other party? Is not that the situation of the case?

Mr. BALLINGER. I could not tell you that. I am afraid a lawyer will have to answer that.

Senator AUSTIN. That is my opinion.

Senator O'MAHONEY. I think that is the practice.

Mr. BALLINGER. They file affidavits of compliance with the orders, but the affidavits do not always mean what they say.

This American Sheet & Tin Plate Co. case is a very interesting case. It shows that the six little men can get into when opposed by financial power is absolutely hopeless. There are about 15 tin-plate manufacturers in the United States. The United States Steel Corporation through two of its subsidiaries accounts for 42 percent of all the tin plate produced. That is the concentration at one end of the line. At the other end, tin plate is used to make cans. There is the same concentration there. Three companies make 90 percent of all cans. The remaining 10 percent is distributed among the little fellows who manage to make a living off of the waste production of the tin-plate

manufacturers. That is an interesting situation. These little fellows are like characters out of Poor Richard's Almanac. They make a living out of waste. One of the most useful of all capitalists is a man who can make a living out of waste.

In manufacturing tin plate, the tin manufacturers turn out what is called "prime tin plate," "seconds" and "waste waste." The technical process in rolling tin plate exactly to the right size is not perfect. So frequently the sheet has to be cut down and what is left is known as "seconds" if it is not defective in its structure. If it is defective in its structure, it is known as "waste waste." For many years in the tin-plate industry the "seconds" and "waste waste" have been sold at prices lower than "prime" tin plate. A whole business has grown up on the use of "seconds" and "waste waste."

I remember when that complaint was issued a man came into the office of the Federal Trade Commission, a fine looking, rugged fellow who looked as though he had been through a lot of life's battles. He said he had built up a business amounting to a million dollars, and within 10 months he was ruined, because the tin-plate manufacturers had stopped producing seconds. They would not produce them. They said the reason was that a number of manufacturers were taking prime tin plate and selling it at the price of seconds.

Senator O'MAHONEY. Did they stop producing it or did they stop selling it?

Mr. BALLINGER. They would not quote prices on it.

Senator O'MAHONEY. The seconds must necessarily be produced?

Mr. BALLINGER. They would not put them on the market, so you could not get it.

Then there is a third kind of tin plate which is called "waste waste". It has defects in it. A good many little fellows live off of that.

Senator O'MAHONEY. Making what?

Mr. BALLINGER. Making tin cans, and selling them to people who want cheap cans.

After they stopped quoting a price on seconds they decided they must get rid of the waste waste, as that might be used by the little fellows. They put it up in a box. The box looked all right, but they cut a triangle off the corner of each sheet of tin plate so you could not make a can out of it. That was the situation the Commission faced in that case. A good many people were thrown out of business.

Senator O'MAHONEY. How many?

Mr. BALLINGER. We have no estimate of that. The evidence showed there was a good deal of trouble.

That is one case. Do you want me to give any more cases?

Senator O'MAHONEY. You may.

Senator AUSTIN. Before you leave this, was there a recognizable change in the price of the commodity after the decision of the Federal Trade Commission to which you have referred?

Mr. BALLINGER. It was not a question of changing the price but whether the companies would first quote prices on seconds. If because of concerted action they would not quote prices on seconds the little fellows could not buy such seconds. Secondly, would the companies cease from acting in concert to sell mutilated waste waste.

Senator AUSTIN. What was the effect of the decision?

Mr. BALLINGER. I think it helped the situation, though I cannot tell you exactly. We have not received any more complaints, so it

would seem that the little fellows are getting along. We may get complaint at any time.

Senator AUSTIN. Did they agree in the consent decree to discontinue the practice?

Mr. BALLINGER. The complaint of the Commission, Senator, charged the tin-plate manufacturers with acting in concert to eliminate the quoting of prices on seconds and with acting in concert to mutilate waste waste when sold. These allegations, Senator, were all admitted and the companies signed on the dotted line.

Senator O'MAHONEY. What were the allegations?

Mr. BALLINGER. Producers of tin plate acting in concert to end the quoting of prices on seconds, acting in concert to mutilate waste waste when sold, and acting in concert to sell waste waste in foreign countries without mutilation and to quote prices on seconds in foreign countries.

Senator O'MAHONEY. Did the decree require the sale of seconds?

Mr. BALLINGER. The companies agreed to stop in acting in concert not to sell such seconds.

Senator O'MAHONEY. And your testimony is that, having agreed to dispose of the seconds again, they did it in such a fashion that they could not be used for the purpose of making complete cans?

Mr. BALLINGER. Yes.

Senator AUSTIN. Do you mean they did that after the decree?

Mr. BALLINGER. No; that was before the decree.

Senator O'MAHONEY. Then I misunderstood you. The seconds are being sold now?

Mr. BALLINGER. Yes; I want to also say that while producers of tinplate were refusing to sell little American businessmen, who were going through a tremendous depression, seconds, or were selling mutilated waste waste, they shipped seconds and uncut waste waste to Europe. The little businessman in Europe could live off of it, but our little-business men could not.

Senator O'MAHONEY. And you do not have any figures of the number of small users of the seconds who were affected by the practice which you stopped?

Mr. BALLINGER. No.

Senator O'MAHONEY. Who brought the complaints?

Mr. BALLINGER. I am not sure about that. That was by correspondence.

Senator O'MAHONEY. I believe you made some reference to tire companies.

Mr. BALLINGER. In the Goodyear case I think thousands of little independent tire dealers were put out of business. Not only did tire dealers fall by the wayside, but the manufacturers of tires. The little independent tire business was going along all right until 1927 or 1928, and then there began to be trouble. It was claimed that nobody could compete with Sears, Roebuck in the selling of tires.

Senator O'MAHONEY. Do you mean as to price?

Mr. BALLINGER. Yes; they could not possibly meet the prices of Sears, Roebuck. The divisional manager of Sears, Roebuck & Co. in a letter to district and group managers in the tire department said "We are in a position in all markets to always meet competition." All this looked like amazing efficiency on the part of Sears, Roebuck.

But it turned out that it wasn't efficiency. It was just another example of little businessmen being plowed under by the operation of a predatory business practice. The low prices of Sears, Roebuck were not due to the efficiency of Sears, Roebuck.

Sears, Roebuck had entered into a contract with the Goodyear Tire Co. In fact there were three contracts signed. In the third one, around 1932 or 1933, the Goodyear Co. gave a secret bonus to the Sears-Roebuck Co.—all this on top of the tremendous discriminatory advantages already enjoyed by Sears, Roebuck under the other two contracts. The Goodyear Co. gave the Sears, Roebuck Co. 18,000 shares of its common stock and a bonus of \$800,000 to buy 32,000 more shares of such stock. The giving of this huge bonus was done in the greatest secrecy. The transfer of the \$800,000 was not handled through the Goodyear Co.'s bank. The order was on a blank check with the name of the bank typewritten in and the transfer of the funds was set up on the books of the Goodyear Co. in a special account.

The purpose of this contract, I believe, was very clear. The Commission found that on a certain volume of business done by the Goodyear Tire Co. with its independent dealers from 1926 to 1927, the company made \$20,000,000 on this business. On a comparable volume of business with the Sears, Roebuck Co. the Goodyear Tire Co. made only \$7,000,000 net profit. Why was the Goodyear Co. willing to sacrifice the goose that laid the most golden eggs unless it was for the purpose of hatching a new goose that would lay a bigger golden egg? I am convinced that the Goodyear Co. would not have permitted the destruction of its own independent tire dealers who were yielding to the company a greater profit than the Sears, Roebuck Co. if they had not before them the objective of tying up with Sears Roebuck so as to push independent tire dealers to the wall and cash in on a monopolistic position.

The Commission found that the discrimination enjoyed by Sears Roebuck in the purchase of its tires from the Goodyear Co. constituted a "major causative factor" in the bankruptcy of many tire manufacturers and thousands of independent tire dealers. In 1928 there were about 104 to 106 tire manufacturers in the United States. By 1933 the number had fallen off to about 32 or 30. The Commission has a tremendous file of letters from people who were put out of business by the situation I have described. They came down to the Commission in droves to testify.

Senator O'MAHONEY. Will you give the committee some more cases? I have here on my list the Building Material Dealers Alliance case. Tell us something about that.

Mr. BALLINGER. That is a very interesting case, Senator. In 1933 the Federal Trade Commission received a rather tragic letter from a businessman in the State of Pennsylvania. He wrote the Commission as follows:

I am an American citizen, born and raised in ——— County, with a wife and 11 children, and am conducting a legitimate builders' supplies business in the State of ———.

Several of the other county dealers have an organization which apparently has succeeded in influencing the cement companies to refrain from selling me their products. One such concern, with no local representative, has refused to sell me a carload of cement for cash giving as the reason the fact that I am not a member "of the gang." This is the sort of thing that I have to contend with and if such unfair trade methods continue I will soon be forced out of business.

This letter was typical of many complaints received by the Federal Trade Commission in this case. The Commission conducted an exhaustive inquiry into the facts covering a period of 2 years. As a result of this painstaking and thorough investigation the Commission unanimously issued a complaint against a number of organizations, their officers and members, engaged in the building materials and builders' supplies industry.

A large amount of evidence was taken at public hearings. The official transcript of the record contains approximately 2,500 pages of testimony which was given by a large number of witnesses under oath; in addition to this oral testimony, several hundred exhibits were offered and admitted in evidence. The Commission made a careful study of this voluminous record which was further supplemented by briefs and oral arguments of counsel representing the Commission and the respondents. The Commission then made only such findings of facts as in its judgment are supported by the evidence in the case and issued a cease-and-desist order. The said order enumerates the illegal practices prohibited thereby, which include price fixing, boycotting, oppression, intimidation, and various efforts to effectuate restraint of trade.

The situation which the Commission unearthed was something like this: For a number of years in the cement industry there has been considerable controversy as to whether trucking of cement should or should not be allowed. There has been a very strong tendency to eliminate such trucking. The use of trucks by dealers who called for their cement at the mill upset the basing-point system and jeopardized the price structure of cement under such basing-point system. Consequently the manufacturers have long been opposed to permitting purchasers of cement to call for their cement and truck it away and they have been opposed to cement manufacturers who bought or hired trucks to deliver their cement. You see, it was more economical many times to deliver by truck than by rail.

Cement dealers, on the other hand, have also been opposed to trucking because they, too, have been interested in maintaining the price structure at which cement is sold to contractors and other users. If dealers could call for their cement and truck it away, they would realize a saving on this kind of delivery and such dealers would be in a position to lower the whole price structure at which cement was sold by dealers.

Out of this desire to control competition and the price of their product, the dealers in building supplies began to organize themselves into powerful guilds. The Building Material Dealers Alliance was one of the parent guilds. These guilds operated over certain territories. The Commission found that the purpose of these guilds was to—

(a) Limit the distribution of building materials and builders' supplies to only recognized dealers—that is, dealers who were members of the guild and in good standing. In order to be a member of the guild one had to give a written pledge and other promises and agreements to the effect that the member would support and adhere to the program of the guild.

(b) Limit distribution of building materials and builders' supplies to railroad transportation in carload quantities and thus to eliminate trucking.

(c) Fix prices among recognized dealers in their respective communities.

(d) Prevent any sales of building materials directly to contractors and to compel manufacturers to sell only to recognized dealers and to require contractors to buy only from dealers.

(e) Compel certain political subdivisions of the State governments and the Federal Government to purchase only from dealers and to prevent such political subdivisions from buying directly from the manufacturer, with the possibility of cutting the cost of purchase.

(f) Drive out of existence all brokers engaged in the distribution of building materials and builders' supplies.

(g) Prevent new dealers from going into the business of distributing builders' supplies.

In other words, the guilds elected only those dealers they wanted to. They restricted the number so that each dealer would be practically assured a comfortable living and they ruthlessly rejected all dealers who tried to cut the price of cement and other building materials. Any new dealer wishing to go into the business had to get the consent of his local guild. He had to show that his services were needed in the community—in other words, that there was room for another dealer. Since the local guild decided the matter, the applicant was generally denied membership.

The technique of the conspiracy was as follows: The guild dealers exerted tremendous pressure on manufacturers and producers of building materials and builders supplies to accept and cooperate with the guild program. They wrote them letters, called them up on the telephone, and dispatched telegrams. The plain inference of many of these communications was that if the manufacturer did not abide by the guild program the members of the guild would do no further business with him. In fact, many of these official communications definitely so stated.

The guild officers and members conducted a system of espionage upon the business of manufacturers, members, nonrecognized dealers, and others.

Price lists were issued from the office of one Lawrence I. McQueen, who was an official and the dominant executive of several of the respondent guilds; lists the dealers in Pittsburgh and western Pennsylvania markets were supposed to adhere to. Changes of price were furnished from Mr. McQueen's office by supplemental pages handed to the members to insert in their "price books." If a dealer failed to adhere to said prices, pressure was promptly brought to bear by the guild on the source of supply of that dealer, and other guild members would promptly refuse to purchase materials from the manufacturer who insisted upon selling to a dealer who was not adhering to the price list.

The major commodities involved in this conspiracy included cement, clay products, metal lath, lime, gypsum products, metal sash, mineral aggregates, ready mixed concrete, brick, roofing, and sewer pipe.

When the technique was applied, (1) the dealer guilds were able to dictate to cement manufacturers and the producers of building materials that they could not ship to dealers outside their particular territory; (2) the guild members determined among themselves a territory for each dealer and over this principality the dealer had a practical monopoly; (3) the trucking of cement was effectively handled

by imposing a 15-cent tax per barrel on any cement that was trucked—a differential so high that it was an economy to ship by rail.

An example of the brazenness of this conspiracy is shown by the successful efforts of the building guilds to compel the United States Government to abandon a well-established policy in the cement industry of buying directly from the manufacturer. In its findings the Commission cites the case of invitation for 100,000 barrels of cement extended by F. E. R. A. to cement manufacturers within the State of Ohio. This agency was considerably surprised when no cement company would quote. The same inquiry was then issued to manufacturers outside of the State and again no direct bids were made. Finally a committee of the building guilds met with the purchasing agent for relief work in the State of Ohio and convinced him that dealers had their rights, Government or no Government. The success of the building guilds in this little venture was loudly trumpeted by Mr. Lawrence I. McQueen, and the Commission cites his letter in its findings. Mr. McQueen says, in addressing a form letter to the units of the building federation, that the success of the building guilds in the F. E. R. A. matter was "one of the finest pieces of cooperative work this industry ever engaged in" in "bucking a department of the Government" and thereby securing for "dealer distribution \$50,000,000 worth of business" which the Government was determined to buy direct.

Senator, the *Pittsburgh Plate Glass case* which the Commission decided only a little while ago is another example of how little-business men are punished by big-business men when they seek to be efficient and capitalistic in their business. Prior to 1935 the production of glass in the United States was practically in the hands of three corporations. The largest of these, the Pittsburgh Plate Glass Co., had a capitalization that was approximately \$65,000,000. The Libby-Owens-Ford Glass Co. was capitalized at approximately \$19,000,000, while the American Window Glass Co.'s capitalization was approximately \$17,000,000. The capitalization of all the remaining glass manufacturers was approximately \$2,000,000. Though over 90 percent of all plate and flat glass manufactured in the United States was manufactured by these three concerns, a number of small companies were able to make it difficult for the big three to completely control prices. There is considerable evidence to show that every effort was made by the big three companies to prevent new companies from entering the field. One company started production, and after running a few months the rest of the companies reduced their prices 25 percent and the new company was forced out of the field.

On August 1, 1935, however, the Fourco Glass Co. was chartered and the control of prices became assured in the glass industry. The production of five of the largest independents was merged for selling purposes by the creation of the Fourco corporation. Small plants not in the merger were purchased and closed out so that within a short time there were only four sources of supply, the big three and Fourco.

Now, like the cement manufacturers and the dealers in builders' supplies, the manufacturers of glass and the dealers who distributed the product had an interest in maintaining prices. The Pittsburgh Plate Glass Co. operated 71 warehouses over the United States, which warehouses sold glass products to retailers along with dealers who purchased directly from the glass manufacturers. A dealer, therefore,

who sold his glass below the price sold by the warehouses of the Pittsburgh Plate Glass Co. endangered the retail-price structure. Such a dealer was also persona non grata to other dealers. To remedy this situation, that is, to stop glass dealers from breaking the retail price structure, the glass manufacturers and the guild of the dealer distributors got together. The glass manufacturers had an organization known as the Window Glass Manufacturers Association, while the glass dealers had a guild known as the National Glass Distributors Association. The glass manufacturers and the glass dealers prepared a list of so-called quantity buyers who alone were eligible to buy glass from the glass manufacturers. The word "quantity" was a misnomer. Many of the dealers who could not buy glass directly from the manufacturer bought just as much as dealers who were permitted to. All other glass dealers were forced to buy from these recognized dealers at a mark-up of 7½ percent over the prices charged recognized dealers by the glass manufacturers. The glass manufacturers got 2½ percent of this mark-up and the recognized dealers got 5 percent. Then there was considerable evidence that glass manufacturers and the dealer distributors controlled the price at which the product was to be sold retailers. The result of all this was to exclude from the business of distributing glass a great many glass dealers who suddenly found that they could not buy directly from the glass manufacturers any more but had to pay a prohibitive price for it from the "recognized dealer." The Commission received many complaints from little glass dealers.

Senator O'MAHONEY. I think early in your remarks you said that some sensational evidence had been introduced in the *Cement case*. Would you be good enough to tell this committee something of the nature of that evidence?

Mr. BALLINGER. The *Cement case*, of course, Senator, is still in the process of trial but the evidence which I am going to read into the record speaks for itself.

The Commission found in the course of its investigation one of the most remarkable letters I have ever read. The Commission will spend nearly \$100,000 in an effort to break up the basing-point system in the cement industry. The contention of the cement companies has been in the past and will undoubtedly be in this case that a basing-point system does not fix prices and, therefore, does not throttle competition. The letter which I am going to read into the record is by a man who was one of the most important figures in the cement industry. Mr. John Treanor was president of the Riverside Cement Corporation, the largest cement corporation on the Pacific coast. He was also a trustee of the Cement Institute for the Pacific-coast district. And on top of that, he had been chairman of the Institute's research marketing committee, a post which would certainly give him an intimate knowledge of the price policies of the cement industry. The background of the Treanor letter is as follows: During the code days of the N. R. A., Governor Horner, of Illinois, complained bitterly to Secretary Ickes about the identical bids which the State of Illinois had received. Secretary Ickes transmitted the letter to the President of the United States and the President forwarded it to Mr. Barton Murray, deputy code administrator. Mr. Murray wired Mr. Rader, chairman of the Cement Institute, asking him if it would not be possible for the cement industry to quote its

prices to the Government f. o. b. mill rather than f. o. b. destination. Mr. Rader turned Mr. Murray down flat, and it was because of the uncompromising position taken by Mr. Rader that Mr. Treanor wrote the following letter:

MAY 17, 1934.

B. H. RADER,
Regional Manager, the Cement Institute.

DEAR BUD: I have been thinking about your telephone call, from which I get the impression that you sent a pretty unyielding telegram to Murray, as you say at least that you did not intend to make any concession before the "trading" starts.

Now, I would have conceded the mill price at once on Federal business and I would have indicated a very open-minded attitude toward the larger question; and this to create the impression, deliberately, that something besides obstruction and short range trading can be had out of the cement industry. I would have taken advantage of this great opportunity to lay a telegram on the President's desk which he would have read. We know he is watching the cement question. I would have tried to strike a new note of cooperation and reasonableness, in contrast with what Ickes and the Federal Trade Commission tell him about us. This could have been the beginning of a real campaign for that is why I am writing you. The only thing that I think has been lost is a neat opportunity to score our point with the President himself.

As a member of this industry, my fate is to a considerable extent in your hands, so that I have both a right and a duty to let you know my views.

If we were a generally well-regarded industry, we might be justified in taking a stiff trading position upon the President's request. However, we are anything but popular, we have a very difficult position to maneuver out of, and we should not gamble unnecessarily, running as we do the risk of a blast from the President's office that may be ruinous.

The f. o. b. mill price on Federal business is of no real importance, is entirely practical to grant, can, and I think will, be forced out of us; therefore good trading would have been to give it without any trading.

Now, when it comes to the larger question of mill price on commercial business, much as I would like to think otherwise, I am convinced that we will have to maintain our basing-point position and refuse the President's request. It will not be an easy refusal to defend upon economic grounds. It will be almost impossible to persuade an unsympathetic Government that we are justified in our refusal. But the least we can do is to prepare the way by an initial showing of open-mindedness, which might entitle our later argument to sympathetic hearing.

Do you think any of the arguments for the basing-point system, which we have thus far advanced, will arouse anything but derision in and out of the Government? I have read them all recently. Some of them are very clever and ingenious. They amount to this, however: That we price this way in order to discourage monopolistic practices and to preserve free competition, etc. This is sheer bunk and hypocrisy. The truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours is an industry above all others that cannot stand free competition, that must systematically restrain competition or be ruined. We sell in a buyers' market all the time. The capital cost, as distinguished from the out-of-pocket cost, of producing cement is extraordinarily large. In free competition this capital cost is whittled away and this means loss and ruin.

Now an industry in this fix needs some sympathetic understanding on the part of the Government. I think our case can be made out, but it is not going to be done by the route of hard-boiled short-range trading. We are either dealing with a very important large question of public relations or we are not. If we are not, we don't have to be so careful of our methods. If we are, then we had better approach the question in a large way; and the first approach is to acquire some good will in governmental quarters. All that we need for our reasonable prosperity is consistency with the President's original plan for N. R. A.

I haven't seen the telegram you sent. This letter may be unwarranted and is pretty sure to make you sore, but it is based upon your remark about "trading" and upon some general views of industry policy which I heard advanced by some of the very influential men of our industry.

Yours truly,

(Signed) JOHN TREANOR.

Senators, you will note that Mr. Treanor thinks that competition is impossible between large corporations. I think such a doctrine is very unsound. The automobile industry has flourished on price competition and yet automobile corporations are among the very largest in American industry. I am afraid I have not time to fully develop this point but I do hope that those who contend that competition becomes impossible when the units of an industry are large will be thoroughly challenged.

Since my time is limited, Senator O'Mahoney, I am only going to read into the record one more letter by the cement industry. It illustrates the kind of pseudo capitalism which many businessmen are determined to practice in the United States—a pseudo capitalism that is seeking at every turn to suppress efficiency and enterprise. This letter is signed by Edward C. Eckel, geologist of the Tennessee Valley Authority. The letter is as follows:

ALAMEDA, CALIF., May 5, 1934.

DEAR MR. MORGAN: I stopped at Chicago en route to call at Universal Atlas Cement's office and met Messrs. Affleck (president), Stone (vice president), and Van Zandt. We talked cement industry matter in general, but in the course of the talk Affleck spoke of idle capacity and made it clear that he still hopes to hold prices high enough to permit the poorest and worst-located mills to make money. I said, not as representing Tennessee Valley Authority but as an old acquaintance, that to my mind both steel and cement companies would have to write off their poorest investments or else we would be back again to worse than 1929-33.

Affleck and other eastern people will be at Boulder Dam Sunday and Monday and I expect Treanor to talk with them before I meet him.

Very truly yours,

EDW. C. ECKEL.

The files of the Federal Trade Commission are full of current cases which illustrate vividly the struggle of the little-business man against uncaptalist business. I mention the problem that the little-business man has in obtaining advertising space in newspapers at a figure comparable to that at which similar space is sold to the big department stores or other big corporations. About a year ago Mr. George J. Marott, president of one of the largest retail shoe stores in the world, a man who started out in the world with practically nothing, said that the task of securing for little-business men a fair break on the advertising pages of newspapers was in his opinion the greatest problem before little-business men. The discrimination on the advertising page between big corporations and little corporations, he believed, constituted the biggest handicap that little-business men had in their efforts to stay in the picture. I do not wish to be misunderstood as saying that perhaps there should not be some difference in price given the corporation that buys a great deal of advertising space as compared to a small-business concern that buys much less. What I do mean to say is that often the difference in price bears no relation to any savings in cost and is, therefore, unjustified and constitutes an unlawful discrimination. A little fellow may buy a whole page in the newspaper and pay 13 cents a line, while a big corporation may buy exactly the same space and pay only 6 cents a line. Though the total advertisement purchased over the year by the larger corporation may be much greater than that of the little concern, the difference in the price often bears no relation whatsoever to any savings in cost to the newspaper.

In the *Hollywood Hat Co. case*, the Commission found this company discriminating in price by selling hats to the favored customers at

\$21 per dozen and to other customers at from \$24 to \$27 per dozen, or selling the favored customers hats at \$36 per dozen and to less-favored competitors at \$39 to \$42 per dozen. These differences in prices, the Commission found were utterly unjustified since they did not reflect any savings in cost. They were due to the fact that the favored buyers had such economic buying power that they could exact a preferential treatment which the little fellow could not successfully challenge.

It must be remembered that price discrimination has been one of the most effective factors in promoting monopoly in the United States. It is a predatory practice which has ruined many small businessmen. And, Senators, the fight is not always between a giant corporation and a tiny little concern. It is frequently between a large combine and an efficient but small independent whose purchases are not trifling ones. Often the differential is not in excess of 5 percent but it is this 5 percent or less which spells success or failure for the independent. Sales by the Great Atlantic & Pacific Tea Co. in the retail food industry are approximately \$1,000,000,000 per year. A 5 percent differential in favor of this giant corporation would save the A. & P. \$50,000,000 a year, and at this rate in 10 years would save them an amount equal to \$500,000,000. Safeway Stores and Kroger Grocery sales amount to approximately one-third of a billion dollars a year and a 5 percent differential to them not justified by savings in cost to the seller would create a tremendous financial reserve with which to wage their battles. A 2 percent differential to the Great Atlantic & Pacific Tea Co. would amount to approximately \$20,000,000 a year. This consideration was undoubtedly before the Commission when it proceeded against the H. C. Brill Co., one of the thousands of small suppliers selling both to the independents and to the great corporate chains. The Commission there found an unjustifiable 2 percent differential which it ordered removed and its action in this matter will undoubtedly serve as notice of its position and be welcomed by the smaller independents throughout the country.

I do not know how we can insure that businessmen who prey upon other businessmen will be prosecuted. But I do feel that whatever the degree of enforcement of the Sherman law, we can successfully deter a good deal of business that would otherwise be predatory from violating the Sherman statute by putting into that statute a drastic penalty. Such a drastic penalty will, in the language of the poet, "frighten off the birds of prey." Even though prosecution is extremely lax, there will always be a chance then that conviction might ensue and the businessman or business group considering the profit that lies in ruining other businessmen will weight this gain against a risk that at some future date they may be caught and ruined.

Investigation, trial, and conviction of antitrust violators must necessarily take time. Even under the most ideal conditions a great deal of time would be consumed by the Government in investigating a violation of the antitrust laws, in trying a case and in defending or prosecuting any appeal. Such time consumption is inherent in any temperate judicial process. Certainly we cannot expect to establish time limits on investigation or the trial of cases. But since years frequently intervene between the time a complaint is received, investigated by the Government, and the Department of Justice succeeds in

getting a final conviction in the highest court of the land, we must realize that the consumption of time in the arresting of a monopoly is of the greatest danger to the small-business man.

Monopolies have gotten under way and little businessmen have filled the air with their lamentations. Years have gone by before the Federal Government finally swung into action. More years have intervened before the long route of judicial appeal had been traveled. During all this time antitrust violators have plenty of time to utterly destroy the small-business man, whose ultimate vindication, if there is vindication, amounted to only a paper victory. His business is gone and he is out of the picture. A good stiff penalty in the antitrust laws will, I firmly believe, do more to protect little-business men from the destruction which follows when these laws are violated than any other reform of the Sherman statute.

Senator O'Mahoney, before I close, I would like to be sure that a good part of my remarks are properly focused. The bill proposed by you and Senator Borah will unquestionably impose more regulation upon business. A few days ago I heard Mr. Hart say that what business needs is not more regulation but less regulation. He contended that regulation generally proceeds on the unsound premise that a large number of businessmen should be controlled by law because a few—a very few—businessmen are bad. Yesterday Mr. Weeks, I believe, made a similar plea because he, like Mr. Hart, believed that, since very few businessmen abuse the economic power which they have, the Corporation Licensing Act should be shelved.

Now, Senators, I do not, of course, believe that all businessmen are bad. But I do believe that the number who engage every year in predatory capitalistic business practices is far greater than Mr. Hart or Mr. Weeks would have this committee believe. I have tried to emphasize to this committee that for 70 years in the United States the flourishing of such practices has been steadily undermining capitalism. In illustrating such practices, I stated in a part of my remarks what happened many years ago. I also gave some current examples. Of course, I only touched the surface. What I want to emphasize is that the trend has been continuous and that in the last 20 years predatory business practices have multiplied to such an extent that they threaten the survival of the capitalistic system in the United States. For instance, from 1920 to 1930 a tidal wave of predacity swept over the American business world. Old techniques, such as monopoly, were applied vigorously. Investment trusts, protective committees for distressed corporations, great chain stores in the field of distribution, became the instruments for new and better ways to destroy capitalism. Many of these abuses are now under regulation, but the task is far from finished. There is still a crying need for legislation to stop predatory business practices.

The objective of the Borah-O'Mahoney bill is splendid. Particular provisions in the present bill may in executive sessions and in view of the testimony already given be omitted, toned down, or added to. New provisions may be inserted. But the objective of the bill, Senators, is to put an end to certain very predatory business practices. Let me cite the "proxy" abuse which the proposed bill is trying to remedy. During the last 20 years stockholders have been betrayed time and again by autocratic corporate management. Corporate management is autocratic chiefly because it controls the proxy

machinery of corporations. A quarter of a century ago the Pujo Committee revealed how unprotected the owners of corporations—the common-stock holders—are from arrogant and Stalinesque corporate management when it found:

None of the witnesses (the leading American bankers testified) was able to name an instance in the history of the country in which the stockholders had succeeded in overthrowing an existing management in any large corporation. Nor does it appear that stockholders have ever even succeeded insofar as to secure the investigation of an existing management of a corporation to ascertain whether it has been well or honestly managed.

Since this finding of the Pujo Committee I can recall only one instance where corrupt corporate management was ousted by indignant stockholders. This was the case of *John D. Rockefeller v. Col. Stewart of the Standard Oil Corporation of Indiana*. And in this exceptional case it took the resources of a Rockefeller to turn the trick.

Let me cite that section of the Corporation Licensing Act which forbids payment of a bonus to corporate management without the consent of the stockholders. This section might be called the "Anti-Graco" section of the Corporation Licensing Act, just as a certain section of the Securities and Exchange Act which forbids the officers of a corporation to speculate in its securities is popularly known as the "Anti Wiggin" section of the S. E. C. Act. What went on in Bethlehem Steel Corporation from 1917 to 1930 illustrates graphically the grave abuse which this section of the Corporation Licensing Act seeks to correct. The Bethlehem bonuses began in 1917 and were paid first to 8 or 10 of the officers and finally to about 21. From 1925 to 1928 no dividends were paid by Bethlehem Steel Corporation, but President Grace received his bonus just the same. The stockholders got nothing, but Grace got over \$3,000,000 in bonuses during these years. For 13 years, 1918 to 1930, the Grace bonuses averaged \$814,933 a year. During the period in which these bonuses for the executive officers were in force and up to the close of 1928 there had been taken out of the corporate treasury for this purpose (bonuses) \$31,878,255, as against \$40,886,996 paid the common stockholders, or in other words 80 percent of the amount distributed as dividends to the owners of the common stock—that is, the owners of the corporation. In the 4 years, 1925 to 1928 inclusive, during which not a dollar of dividends was paid to the common stockholders of the Bethlehem Steel Corporation, \$6,800,524 was paid to these favored directors and other executives. Although the company in 1930 failed to earn its dividends, it paid a bonus of \$1,015,591 to President Grace.

How predatory the payment of bonuses in the Bethlehem Steel Corporation was may be measured by comparing its bonus policy with that of the United States Steel Corporation. The United States Steel Corporation, though predatory when dealing with consumers of steel, apparently has a high standard of ethics toward its owners when paying bonuses to its officers and directors. The United States Steel Corporation in 1930 paid \$3,122,168 in bonuses. This was about what the Bethlehem paid out. The Bethlehem bonus was paid to 21 men. The United States Steel bonuses were paid to 2,574 executive officers and others. The largest bonus paid by United States Steel to any one individual was \$70,000. The largest paid by Bethlehem was over \$1,000,000. The bonuses paid by the Bethlehem officials to

themselves were paid irrespective of earnings—were paid in spite of the fact that earnings in 1930 were practically cut in half and were not sufficient to cover interest and dividends. The United States Steel bonuses are paid only when net income after all charges, taxes, and depreciation reaches \$100,000,000 for the year. Most important, however, is the fact that United States Steel Corporation reported its bonuses in full to its stockholders, while the bonuses of the Bethlehem Steel Corporation were kept a profound secret even from some of the directors and were revealed only when Mr. Grace was put on the witness stand and cross-examined by the lawyers of Mr. Cyrus Eaton after the attempted merger of Bethlehem with the Youngstown Sheet & Tube Co.

There are many other serious predatory practices which the proposed bill tries to reach. The particular provisions of the present bill may not be the best provisions. There may have to be some fine adjustments before the regulation decreed will strike solely and effectively at the predatory practices which the bill seeks to end. But I do hope specious arguments, however sincerely made, about the innate social-mindedness of 999,999 business men out of every 1,000,000 will not mislead this committee into thinking that the proposed regulation should be abandoned because predacity in business is rare and exceptional. The kind of abuses which the Corporation Licensing Act aims to suppress are very prevalent, in my opinion. If an investigation were made of the extent to which these abuses existed, I think the results would be both alarming and convincing. Ceaseless war must be made upon predatory business in the United States if capitalism is to survive.

The objective of the proposed bill is in defense of business initiative, private property, and employment. Business initiative cannot be legitimately exercised where it is exposed to feudal methods of repression. Private property in a capitalistic system is a meaningless concept if what a man can earn through thrift, industry, efficiency, and honesty can be taken away from him by the application of business techniques designed only to plunder and confiscate other people's property.

Finally, the giant despair athwart the road to plenty and the employment of millions now unemployed is, I believe, monopoly and unjustifiable restraints of trade in sundry forms. Take these shackles off of business and millions of people now expelled from the capitalistic system will find work. Real and abiding prosperity lies just around the corner of monopoly. But the turning of that corner calls for resolute action. If we turn this corner, if we wage a successful war on predatory business, the capitalistic system will be preserved in the United States. If we lose this war, I am afraid of either the Fascist state or the proletarian commonwealth—historically the frequent offspring of marauding business which concentrated wealth and economic opportunity in the hands of a few.

I thank you very much for the privilege of appearing before the committee.

Senator AUSTIN. Do you speak today for the Federal Trade Commission?

Mr. BALLINGER. I do not. I speak entirely for myself.

STATEMENT OF ARTHUR M. ALLEN, ATTORNEY, PROVIDENCE, R. I.

Senator O'MAHONEY. You may state your name and residence.

Mr. ALLEN. My name is Arthur M. Allen. My residence, Providence, R. I. My business, attorney at law, which I practice as a member of the firm of Hinckley, Allen, Tillinghast & Wheeler, with offices at 2200 Industrial Trust Building in Providence.

Senator O'MAHONEY. And whom do you represent here this morning?

Mr. ALLEN. I am here representing the following organizations: Providence Chamber of Commerce; Rhode Island Textile Association; Associated Industries of Rhode Island; Rhode Island Branch, National Metal Trades Association; New England Manufacturing Jewelers & Silversmiths' Association, Inc.; East Greenwich Chamber of Commerce; Westerly Chamber of Commerce; and Manufacturers Association of Connecticut.

I have here, if the committee cares for it, photostatic copies of my letters of authorization.

Senator O'MAHONEY. That is not necessary. We will assume that you represent these various organizations.

Mr. ALLEN. I understand I am to have only a limited time.

Senator O'MAHONEY. You may have as much time as you desire.

Mr. ALLEN. Then I should like to proceed with my prepared statement, and will be glad to be interrupted at any point.

Senator O'MAHONEY. You may proceed.

Mr. ALLEN. I want to express in the first place my great appreciation of the privilege of appearing before your committee. While I am here in opposition to the act and while you may consider that some of my objections to it are unwarrantedly sweeping, I trust that you will understand that I am really speaking with real humility and with great deference to the eminent authors. I would be ignorant indeed if I were not aware of the outstanding service that Senator Borah has rendered to this country for many years, if I were not aware of his deep and comprehensive knowledge of monopoly and trust problems. I have read also with the greatest interest the reports of the hearings that were held before your committee last year when an earlier draft of this bill was being considered and I am conscious that you have made a most erudite study of the many subjects which underlie the purposes sought to be accomplished by this bill.

Senator AUSTIN. You are referring to Senator O'Mahoney, of Wyoming, are you not?

Mr. ALLEN. Yes. I cannot, of course, set up against his my own limited knowledge of these subjects. Possibly my excuse for taking issue can be based upon a difference in the point of view. You have seen from your view of the country as a whole certain evils which you believe exist and which ought to be corrected. Possibly the practicing lawyer sees more clearly the immediate effect of the legislation upon the individual. Sometimes the interests of the individual must give way to the interests of the country as a whole. I am hoping to convince you, however, or if not to convince you, at least to adduce sound arguments, for the proposition that this bill is so burdensome upon the individual that some other method should be sought for accomplishing the purposes which you have in mind.

May I say a few words about the organizations I represent, in order that you may understand their point of view?

The headquarters of the first five concerns above-named are at Providence; and the East Greenwich Chamber of Commerce and Westerly Chamber of Commerce are located respectively at East Greenwich and Westerly, R. I.

The headquarters of the Manufacturers Association of Connecticut is at Hartford, Conn.

The organizations whom I represent may be generally designated as trade associations. None of them is political in any sense of the word. None of them is propagandist. Their sole purpose is to work for their mutual trade benefit and for the forwarding of the interests of the community in which they exist.

The membership and function of the Providence Chamber of Commerce may be regarded as typical. This association was organized in 1868 and was originally known as the Board of Trade. Its objects as stated in its present constitution are:

The objects and purposes of this chamber shall be to advance the commerce, industry, and civil welfare of Providence, and to aid in the conservation and progress of all the legitimate business, civic interests, and agricultural advancement of Providence and vicinity; it being expressly understood that under no circumstances shall the policy or attitude of this chamber be identified with politics or religious differences.

The chamber has a membership of 1,080, representing all lines of business and the professions. Most of the memberships are of corporations, which in turn, however, designate representatives. The number of these representatives, for the most part executives of the corporations, aggregates several thousand. The stockholders represented by these corporations undoubtedly comprise a very substantial portion of the population of our State. In addition to corporate members there are many individual members including lawyers, doctors, dentists, insurance brokers, and bankers.

In the membership is a large group of retail trade merchants under the designation of the Retail Trade Board. Industry is represented through many of the manufacturing concerns. Membership is not confined to the city of Providence, but embraces industrial organizations in all parts of the State representing a great diversity of industries.

The chamber has a long-established reputation for definite action in behalf of all of the business interests of the State, including industries, transportation, merchandising, retail trading and professional activities.

Through special action it has direct contact with Brown University for research purposes under an organization known as the Brown Bureau of Business Administration which collects, analyzes and distributes accurate information as to industry and trade in the State.

It also has a special cooperating group known as the Trade and Professional Associations, some 35 in number, and consisting of a total membership of probably 5,000. These organizations act in close cooperation with the Chamber on all important matters affecting the business of the city.

The East Greenwich Chamber of Commerce and Westerly Chamber of Commerce are organizations similar in scope, within their respective localities, to the Providence Chamber of Commerce.

The Rhode Island Textile Association membership is made up of employers of more than 50,000 workers in the various branches of textile manufacturing and finishing in the State of Rhode Island.

The Manufacturing Jewelers and Silversmiths' Association consists of about 150 of the manufacturing jewelers in Rhode Island, the Attleboros in Massachusetts, and some in Connecticut. There are 150 members in all, the employees of which represent a majority of employees in the industry in said section. It is certainly the largest manufacturing jewelers' association in the country, and I am not aware that there is, as a matter of fact, any other.

The Manufacturers Association of Connecticut comprises in its membership practically all of the manufacturing firms and corporations located in the State of Connecticut.

Of even greater importance than the foregoing is the fact that back of every corporation represented are a large number of individuals, and these individuals are the one who will be really affected by burdensome legislation directed against the corporations themselves. These individuals are for the most part hard-working men, striving to do their best to keep their businesses alive and prosperous. They are not "economic royalists" or "malefactors of great wealth," and few of them men of great wealth. They are my friends and neighbors and would be yours if you lived in our territory.

In my opinion far too much stress has been laid, in the discussion of the policy of this bill and of bills having a somewhat similar purpose, upon the assumption that, after all, the entities that it is sought to control or regulate or punish or put out of existence are soulless corporations who do not eat or drink and who cannot feel pain or want. This, of course, is an entire misconception of the real issue. Any law which affects a corporation to its hurt really bears down upon the individual stockholders who compose it. It bears down just as heavily also upon every laboring man employed by the corporation so affected. When we are attempting, therefore, to point out the hardships bearing upon corporations, we have in every case a real human problem to consider. If you kill the corporation or diminish its power profitably to do its business, you are affecting its ability to pay dividends to its stockholders and its ability to pay liberal wages to its employees. You are affecting the power of the Government to collect taxes, and imposing additional burdens on it from unemployment.

I have called your attention to the fact that the Providence Chamber of Commerce, and I believe the Westerly and East Greenwich Chambers of Commerce, include in their membership professional men, insurance brokers, and other individuals not directly concerned with the management of corporations. Some of these individuals are undoubtedly investors. Most of them probably to a small extent; but so far as they are investors, their holdings are undoubtedly in the big national corporations whose regulation for the most part this bill seems designed to accomplish. If that regulation is too strict or too costly or otherwise too burdensome, the bill directly affects those individuals, and in presenting arguments against it, I am representing the interests of those individuals.

There are other aspects in which the regulatory features of this bill may be said to affect individuals in a very true sense. Many of them are the alumni of schools and colleges; are interested in our charitable institutions; hold insurance policies or are depositors in savings banks.

During the past few years, the endowed institutions of the country have among their investments the stocks as well as bonds of the listed corporations whose regulation is sought by this bill. The charitable organizations above referred to, so far as endowed, hold securities of such corporations. Burdensome regulation on corporations affect these endowments and every alumnus and every supporter of such charities is thereby affected. This effect may be indirect but it is none the less real if the regulation imposed is too drastic or severe. So far as the individuals in question hold insurance policies, they are directly affected by burdensome legislation bearing upon the investments of the insurance companies issuing such policies.

Bearing these considerations in mind, it is excusable to speak with some fervor with regard to proposed legislation which as we see it should not be adopted for reasons which I may summarize as follows:

First, because the present time is most inopportune for any legislation which imposes any further burden upon business; and we believe that this is so, even if the burdensome effect of the proposed legislation would be far less than we conceive it to be.

Second, because the cost, trouble, expense, and time consumed and the uncertainty involved in getting a license under the proposed act would in fact be an intolerable burden upon every corporation involved.

Third, because while the purposes sought to be accomplished by the act are in some respects admirable, it comprises in its scope many purposes of a highly controversial nature which ought not to be embodied in one law but which should only be considered separately and dealt with by legislation specifically directed against each particular evil sought to be prevented.

Fourth, because as we believe, the act could not possibly accomplish many of the admirable purposes by reason of which it has been advocated by some of the previous witnesses without a regimentation of industry and an increase of bureaucratic government that would be intolerable. We believe furthermore that the bureaucracy which would have to be created would have to possess truly dictatorial and Fascist powers.

Fifth, and finally, because the penalties imposed for noncompliance with the act and for a breach of any condition of the licenses are far too drastic and would in many instances bear most heavily not upon the persons guilty of such violations but upon many innocent stockholders.

As to the first reason: This proposition has been advanced to you, I am sure, many times, if not with relation to this act, then with relation to other proposed legislation, and oftentimes it has undoubtedly been urged against legislation that should be adopted. It has sometimes been advanced, undoubtedly, by selfish interests and for selfish reasons not entitled to any great consideration. I am convinced, however, that the persons represented by the organizations for whom I appear should commend themselves to you as comprising the great bulk of the worthy citizens of our community. They are not people who desire to violate the laws of their country. They are not people who desire to stand in the way of progress. Most of them I am sure are sincerely interested in the welfare of their employees. They live in communities where child labor and labor of women are no longer problems.

Both Rhode Island and Connecticut have been reasonably progressive with regard to wage and hour laws, and laws limiting the employment of women and children. Some of their businesses, however, were brought near to extinction in the depression of 1929 and 1932. They have been seriously affected by the present recession in business. They are overburdened with taxes, both State and Federal, and they are overwhelmed by the mass of legislation which has been passed seeking to regulate their business activities. With the purpose of much of this legislation they are wholly in sympathy, but they share the feeling recently expressed so ably by Mr. Baruch before the Senate Committee on Unemployment, that burdensome legislation and legislation which induces fear of the result should cease if we are to recover from the recession within a reasonable time. Having this in mind, the organizations which I represent, under date of January 28, 1938, addressed a petition to the President and the Congress of the United States in which they recited that in order that confidence in our Government and economic structure may be restored, a 9-point program be adopted. Undoubtedly copies of that petition have been forwarded to the members of this committee. I realize, however, how much of this material has been sent to you, and I should like to leave with the members of the committee copies of the petition in case that, in the pressure of other matters, you have not seen this particular document. The eighth point in this program was as follows:

In order to restore confidence and to encourage an expansion of business activity, assurance should be given promptly that new governmental controls, such as are contained in the proposed wages and hours bill, and the Federal licensing bill, are not to be established.

There are other points in this program which have a more or less direct bearing upon the desirability of adopting this bill at the present time, even if a similar bill may in the future be desirable. We believe that our discussion will indicate that the point in the program relating to the balancing of the Federal Budget by reducing expenditures, and without increasing taxes, has a direct bearing upon the wisdom of this legislation at this time.

Struggling as it is under a terrifically heavy burden by reason of increased taxes, Social Security legislation, a complicated labor situation induced by the Wagner Labor Act, the Clayton Act, and the Robinson-Patman Act, and other regulatory laws, industry has had all that it can reasonably digest for the moment. It is in addition suffering from the severest and most sudden setback that business has ever had in our whole history. Can it be blamed if it says "Don't give us any more now. We can't take it."

The requirements for obtaining a license are stated in section 3 of the act. The applicant must file with the Federal Trade Commission a sworn statement with regard to its operations which shall include the following information comprising 15 separate items:

- (1) Information concerning its organization and financial structure;
- (2) The character of its transactions in interstate or foreign commerce;
- (3) The terms, position, rights, and privileges of the different classes of its securities outstanding;
- (4) The terms on which its securities have been offered to the public, or otherwise;

(5) The property taken by the applicant at the time of its organization and the consideration paid therefor in money or otherwise;

(6) Its bonded indebtedness and the interests of the promoters therein;

(7) The personnel and salaries of its management;

(8) Its charter and bylaws;

(9) The number and local distribution of its stockholders;

(10) Contracts made with promoters and with financial interests with respect to the organization or management of the applicant and service contracts;

(11) Special legislation relating to the applicant;

(12) The names and post-office addresses of its officers and board of directors;

(13) The amount of each class of stock held by each of its officers and each member of its board of directors;

(14) The amount of stock held by the applicant in other corporations and when acquired; and

(15) Such further information with respect to the operations of the applicant as the Commission may, by regulation, require as necessary or appropriate in the public interest or for the protection of investors.

Senator O'MAHONEY. You are aware, are you not, if you will permit an interruption, that the bill provides for the issuance of a temporary license?

Mr. ALLEN. Yes; I am aware of that. I am making my statement now as to what a corporation has to do in the first instance in order to ultimately get a permanent license. It has to file this written statement to which I referred, containing some 15 different items.

In addition, the corporation has to file a certificate duly authenticated by its officers that by vote of its board of directors it intends to engage in commerce subject to all acts of Congress regulating such commerce or limiting or affecting the rights, powers, or duties of corporations or associations engaged therein.

A mere examination of the list of topics which are required to be covered in the statement above described will convince anyone who has had any experience in filing similar documents with other boards and commissions of the onerous nature of these requirements. The situation most nearly analogous is that existing with respect to the requirements of the Securities Act of 1933, for papers to be filed with the S. E. C. in order to obtain the right to issue new securities. I have before me a photostatic copy of a registration statement actually filed with the S. E. C. In the photostatic form this registration statement is 1½ inches thick. Assuming that the statement required to be filed for the purpose of obtaining a Federal corporation license under the proposed act is no more voluminous than the registration statement which I have before me, and assuming that there are 130,000 corporations that would come under the act—this was the approximate number in 1934 who made tax returns in that year and had assets of over \$100,000—and that each statement would be only as bulky as the registration statement in question, and that these statements were set up on shelves as books would be set up on library shelves, the total amount of shelf space required simply for holding such statements would be 195,000 inches, or 16,250 linear feet, or nearly 3 miles of book shelves. Commodious as are the quarters of some of our Government

departments, the addition of this amount of filing space would seem to create a rather substantial though perhaps minor problem.

It is our belief, however, that if the Federal Trade Commission is really going to pass upon the questions which are involved in determining whether an applicant is entitled to a license in any thorough fashion, the amount of data required to be contained in such sworn statement would greatly exceed the data required in the registration statement filed with the S. E. C. Instead of 3 miles of shelves you might require 5 miles. Our reason for entertaining this conviction is that the registration statement filed with the S. E. C. usually relates only to a particular issue of securities and principally to conditions existing at the time of the filing of the statement; whereas the sworn statement that has to be filed as a condition precedent to obtaining a Federal license includes not only a description of the securities and the condition of the company as existing at the time of the filing of such statement, but an historical survey of the company's security issues and business from the time of its organization. No matter how long the company has been in existence, whether 10 years, 20 years, 50 years perhaps, the statement must include information presumably at the time that it was organized. It must include a description of its transactions in interstate or foreign commerce, a stupendous task in connection with a corporation such as General Motors or General Electric. The statement must include a description of the terms on which its securities have been offered to the public or otherwise, and obviously in order to accomplish the results and give to the Commission the information that it needs in order to determine some of the questions committed to it for decision, the description in most cases would have to go back to the origin of the company and to include a history of every merger, exchange of stock, new issue of stock, retirement of stock, and other details of that nature.

The applicant must also give a description of the property taken by the applicant at the time of its organization, and the consideration paid therefor in money or otherwise. It must describe its bonded indebtedness and the interest of the promoters therein, and any contracts made with promoters and what financial interest with respect to the organization or management of the applicant and service contracts. The mere intelligent reading of such a mass of material would take a force many times the number now employed, which I believe is about 1,566 maintained at a cost of over \$1,353,000.

Senator O'MAHONEY. Why would that be true?

Mr. ALLEN. As I understand it, the purpose of that information is to ascertain whether the corporation has violated the antitrust laws, the Clayton Act, possibly the Robinson-Patman Act, or any of the various amendments to the Sherman and Clayton Acts.

Senator O'MAHONEY. My own judgment is that it will be no more difficult to supply that information than it is for Standard Statistics or Moody or any of those business houses to obtain the information which they have. The theory was primarily that the information which is required by any State before a charter is issued should be filed with the Federal Trade Commission.

Mr. ALLEN. But the bill does not definitely state that. Of course, the bill is your bill. You know what your intentions are in regard to the filing of statements.

Senator O'MAHONEY. I am beginning to wonder whether I have made my intention clear.

Mr. ALLEN. I am coming to that in a moment, and perhaps I might postpone this discussion until I reach it later on.

Senator O'MAHONEY. Very well. I do not mean to interrupt your statement.

Mr. ALLEN. But I gather that the purpose is to prevent any corporation from doing any interstate commerce whatever that has violated the Sherman Act in the first place, the Clayton Act in the second place, the amendments to the Clayton Act in the third place, the Robinson-Patman Act in the fourth place, or any or all of the other amendments to those acts. If the Commission is really to perform the function and duty imposed by this act in relation to 130,000 corporations, to determine whether any of them have violated any of those provisions, it seems to me it would have to obtain a vast amount of information. It does not seem to me a certificate such as you have mentioned would anywhere near cover what the Federal Trade Commission or Mr. Ballinger representing the Commission would have to have.

In connection with the suit in Wisconsin against the oil companies, I understand the issue was as to whether there had been an agreement made in regard to prices. That case took about 3 months to try, and is reputed to have cost the parties and the Government several million dollars. It is not yet concluded, as a matter of fact. There will be an appeal, unless it is settled in some other way.

That burden would be thrown upon the Federal Trade Commission, not with respect to one corporation, but if the Federal Trade Commission is going to do fair and even-handed justice it must make the same investigation with regard to every corporation asking for a license. After all, while great oaks from little acorns grow, if you are going to be fair and enforce this law against the little fellow as well as the big fellow, you must really make an investigation of the business of those small corporations.

A long time before there was much excitement about trusts and monopolies, we had a prosecution at common law in Rhode Island against a number of coal companies, which I had the fortune or misfortune to represent, for conspiracy in restraint of trade at common law. The only allegation was, not that there were any unfair prices charged, but that they did get together and fix prices. I only cite that to show that even the little local corporation may be engaged in practices which might come under the Sherman Act or the Clayton Act or the Robinson-Patman Act.

It is a complicated problem that the Federal Trade Commission would be undertaking, and I think that the cost to the Government and to the corporations themselves would certainly be very substantial. As I stated a few moments ago, I understand that at the present time the Federal Trade Commission has about 566 employees, or did according to the statement on June 30, 1937, and the salary list is about \$1,355,000. Under section 6 of the Federal Trade Commission Act corporations are either required or may be required to file annual reports with the Commission. I understand the Commission has never been able to get an appropriation from Congress that would even warrant them in receiving these reports, to say nothing about actually examining them.

Senator O'MAHONEY. I think that is quite true. I have heard the statement before that duties are sometimes imposed upon government bodies which they cannot discharge because of the lack of appropriation.

Mr. ALLEN. It seems to have been supposed by some of the witnesses who have testified as proponents for the bill, that all that it was necessary for an applicant to do was to file a few simple papers with the Commission and that when these papers were filed, giving the information in question, the license to operate in interstate commerce would be automatically issued. This is not the apparent intent of the act as we read it. We call attention to section 5 which contains the conditions upon which licenses are issued, and particularly to subdivision (i) of said section. This condition, which is to be contained in the license itself, and the licensee is subjected to it, is to the effect that the stock of the licensee shall be fully paid, or payable in cash or in property or in services where the issuance of such stock for such property or services has been authorized upon application to a competent court and under its order, finding upon competent and specific proof that such stock has been or is to be issued on a fair valuation of such property or services. This condition it is to be remembered is made applicable to every applicant, no matter how long the applicant has been in existence as a corporation, or what the terms and circumstances of its organization were. It would involve a determination as to whether the stock originally issued by the United States Steel Co. was fully paid. While this may have been something that should have been investigated when this corporation originally was formed it is not susceptible of determination now; and since the effect of an adverse determination would be a refusal to grant a license, or a revocation of such a license, to do any interstate business whatever, obviously the stock of the corporation would become absolutely worthless and the loss would fall upon the present innocent stockholders. Unless the condition and the information furnished to the Commission is to be a mere formality, the Commission must determine whether the original stock issue was actually fully paid and, apparently, if the stock was issued for property or services, it cannot approve the issuance of the license unless the adequacy of the consideration paid has been determined by some court.

Senator O'MAHONEY. You do not wish the committee to understand, do you, that you are defending the issuance of what is called watered stock?

Mr. ALLEN. I certainly am not.

Senator O'MAHONEY. Do you think that is a practice which should or should not be permitted?

Mr. ALLEN. I think it should not be permitted.

Senator O'MAHONEY. That being the case, have you any suggestion as to how it can be prevented, if that particular provision is not sufficient for that purpose?

Mr. ALLEN. I did not exactly say that provision of this bill would not be sufficient for the purpose.

Senator O'MAHONEY. But your criticism of the provision is that, while it might be sufficient, it is too drastic.

Mr. ALLEN. Yes.

Senator O'MAHONEY. Can you suggest a method which would not be burdensome?

Mr. ALLEN. Our experience has principally been with New England and New York and Delaware corporations. We do not know how it is in other parts of the country. We think that, so far as the investor is concerned, if we are talking about him and his protection, or if you are talking about the creditor and his protection, that our present State laws in our part of the country supply adequate protection. Under our law, the Delaware law, the Massachusetts law, the Maine law, corporations cannot issue par value stock unless the full amount is paid in either in property or services or cash, except that in Delaware and in our State and probably in other States par value stock may be issued for less than the amount of the par value, provided it is stated in the certificate the amount paid for it and how much is due on it in the future. So that when a stock holder buys par value stock, he knows somebody has paid the face value of it, unless it is issued in the particular way I speak of. He has his civil remedy if he is defrauded in that respect.

Senator O'MAHONEY. I think we shall have to take a recess at this point until 2 o'clock.

(Whereupon, at 12:30 p. m., a recess was taken until 2 p. m.)

AFTER RECESS

(At the expiration of the recess the hearing was resumed, as follows:)

STATEMENT OF ARTHUR M. ALLEN—Resumed

Mr. ALLEN. Mr. Chairman, I would like to make one more observation along the line we were talking about before luncheon.

Senator O'MAHONEY. Certainly.

Mr. ALLEN. It has seemed to me that there are really two entirely separate problems in connection with the issuance of corporate stock. Looking at it from the point of view of the stockholders, and not of the creditors, which I do not understand this bill is particularly concerned with, and with respect to stock which may be issued in the future, as well as other securities, it seems to us from our experience as practitioners that the Securities and Exchange Commission admirably looks after the matter of issuing securities, with respect to securities that are sold in interstate commerce and which have, of course, more than the minimum limit of \$30,000.

I have read the testimony of Mr. O'Brien, one of the employees, of the Securities and Exchange Commission, and I was quite surprised at what he felt was the limited scope of the Securities Act of 1933, and the limited powers of the Commission. It seems to us that, on the contrary, although possibly there might be some improvement, that act, as they are operating today, does about all for the investor that anyone could reasonably expect. It requires the absolute truth to be told about the securities, and the whole truth, and imposes very heavy penalties for violation of that obligation to make a full disclosure.

I have before me one of the standard prospectuses, on the basis of which an issue of about 100,000 shares of common stock was recently sold. It is a prospectus that had to be approved in form and in substance by the Securities and Exchange Commission.

Senator O'MAHONEY. Of course, you know that the point of that testimony was that, although a complete disclosure is required, there

is no provision of the Federal law which controls the character of the stock which is sold. So that, for example, if I desire to sell a stock which is not well secured, let us say, I have to make that disclosure to the Securities and Exchange Commission, and it is then turned over to a high pressure salesman who may dispose of it, though the security obviously is practically nonexistent.

Mr. ALLEN. Of course, if you take the position that a government body is to substitute its judgment as to when a stock or other security is well secured, that is one thing. It does not seem to me, frankly, that any government body is wise enough or could possibly have time enough, without having a tremendous statistical force in its employ, to go into the question of stock issued and say to the promoters: "We do not think you are giving enough to preferred stockholders."

Senator O'MAHONEY. I quite agree with you. I do not think that would be wise. I never have thought so. The philosophy of this bill is based upon very definite views of regulatory features which have been followed since the enactment of the Interstate Commerce Act. I understand clearly why witnesses like you and others come before the committee and deliver your statements on the assumption that it is intended to give the Federal Trade Commission these very thorough powers to say yes or no to business with respect to various business deals. Regardless of what the language may be, my theory is that since we are dealing with a national problem, namely, the problem of how to regulate national commerce, which is the problem that is committed to the Federal Congress by the Constitution, and since we recognize and must recognize that this national commerce is carried on by national corporations, it should be the Federal Government and not the State government which may describe and outline the powers of the corporations which carry it on. Now, as a lawyer, you know that when corporations began to come into being as instrumentalities of commerce, in almost all instances every corporation had to receive a special charter from the legislature.

Mr. ALLEN. That is correct.

Senator O'MAHONEY. In other words, if you and I and Senator Austin had decided to form a corporation 100 years ago we would have had to go to the Legislature of Massachusetts or of New York, or whatever State was so fortunate as to have all three of us living in it, and apply to the legislature for a special charter.

Mr. ALLEN. That is true.

Senator O'MAHONEY. Then a little bit later, because so many persons were turning to the use of the corporate instrumentality, general incorporation laws were passed, primarily, I think, because the special charters were being abused, because by reason of special charters powers which some people felt should not be conveyed were conveyed to private individuals. So the general charter law was adopted.

Now, at that time those corporations were primarily engaged in intrastate commerce. They were circumscribed geographically in the area in which they were situated. You and I have seen a great change. The telephone, the telegraph, the railroads, airplanes, and all the things which science has developed, have practically obliterated State lines, so far as national commerce is concerned. We have a situation in which we find national commerce being conducted by artificial agencies which are created by bodies which have no jurisdiction over the field in which those agencies operate.

My own personal point of view is that the powers of such corporations should be derived from the Government which has control over the field in which it operates, and avoid the intermeddling to which you make objection, and which we all know is not always administered for the benefit of the people.

Mr. ALLEN. May I, without impertinence, ask a question?

Senator O'MAHONEY. Certainly. That is what we are here for. We are trying to get light on this problem.

Mr. ALLEN. Of course, your bill, as I see it, does not operate to create a Federal corporation.

Senator O'MAHONEY. No. And the reason for that was, it seems to me and to those with whom I have consulted, that corporations now engaged in interstate commerce may be told: "Here, take a license from the Federal Government, and in obtaining that license conform to certain specifications, a, b, c, d, and e." If any of these specifications are such that they operate disadvantageously upon business, I would be the first person to say we will change them. But I have yet to hear any witness come before this committee and deny the fundamental premise of the bill, namely, that if the fathers of the Constitution were right when they said Congress should have power to regulate interstate commerce, then Congress should prescribe the powers of the instrumentalities which carry it on.

Mr. ALLEN. If that is true of all the witnesses, I am afraid I will have to go out of this room labeled a freak.

Senator O'MAHONEY. No. It is quite obvious that you will not be so labeled.

Mr. ALLEN. I do not feel that, because Congress is given the power to do certain things, it should exercise all its powers to the utmost limit. While Congress has power, I suppose, to levy a tax of 90 percent upon your income, it should not do so.

Senator O'MAHONEY. Of course, that is true.

Mr. ALLEN. It should not necessarily exercise its full power in that direction. We have grown up under a system of State charters. I think lawyers wonder over the next step that may be taken, and view it with considerable care. It seems to me there was particularly in the minds of the lay witnesses the utmost confusion about the charter rights of corporations, as to what rights they might exercise or might be prevented from exercising under the regulatory powers of the State and Federal Governments.

Now, after all, a charter is a rather simple document. All it does is to say, as a rule, that the stock shall be par value or nonpar value, or it shall be divided into one class or more classes. If there are preferential rights to be given, then the preferences will be stated. But that creation of a corporation with those simple fundamental rights does not authorize it to go out and break the laws of the State or the Federal Government.

Senator O'MAHONEY. Of course, it does not. There are inevitable results, however, from the inherent qualifications of corporations thus created. For example, as was described by Mr. O'Brien a few days ago, a corporation created by the State of Delaware sold 100,000 shares of stock to the promoters at 1 cent a share, and the other 100,000 were sold at \$1 or some such figure. That was evidently a device by which the promoters were enabling themselves to obtain control, all the voting power being confined to the 1-cent stock. They were

enabling themselves to obtain and retain control of a corporation which arose by reason of the contributions of the other shareholders.

It is no answer, to my mind, to say that a lot of people desire to buy stock in corporations and surrender all control to the management, because it seems to me that the results in the last 50 years have shown that by the use of devices of that kind the people have been harmed, and there has been no commensurate return in public interest. Nobody will find me denying that 90 percent of the corporations are well managed and that they serve a great and patriotic purpose. Nobody will find me denying that business must be carried on by corporations, or criticizing the corporation as an undesirable instrumentality in our modern economic system.

But I do feel that, in the field of interstate commerce, the people of the whole United States should be the source of the corporate power. I am sorry to have taken your time.

Mr. ALLEN. We have, as I understand it, or had in 1934, about 400,000 corporations in the United States that made income-tax returns. Probably there are a few others. Those corporations have all been created by the various States. Their rights and the rights of the stockholders, common and preferred, and other security holders, are pretty well settled. It does not seem to me the Federal Trade Commission should unscramble the onielette with respect to those corporations.

Senator O'MAHONEY. Certainly not. It should not be attempted. I do not think there is any reason for attempting it. I am not interested in punishing any wrong that may have been committed heretofore. That is all done. The water has gone over the dam. No one can begin to prophesy what developments may be brought forth tomorrow or a week or a year hence, or what new opportunities there will be for wealth. We all know that frequently inventions have made absolutely useless an entire industry. The blacksmith was wiped out with the advent of the automobile, to give a simple example.

Mr. ALLEN. Yes.

Senator O'MAHONEY. And a great amount of money invested in blacksmiths' shops was lost, if the blacksmith did not have sense enough to adapt himself to the coming of the automobile. That is also true of the livery-stable keeper. I am not concerned with the past, but to see what is ahead, and I should think the country should develop a system whereby we may make certain that the corporate instrumentality may be made a pure instrumentality for good, and that the possibility of using it for evil shall be limited to the narrowest possible dimensions.

Mr. ALLEN. I am sure that we all share that idea.

Senator O'MAHONEY. Why, certainly. But I do not think that can be accomplished by following the State system, because a few States would, for the purpose of revenue, or what not, grant to those who desire to incorporate the privilege of writing their own ticket and engaging in business all over the United States.

Mr. ALLEN. May I again and very deferentially ask what particular abuse you have in mind?

Senator O'MAHONEY. They are covered by the various conditions set forth in section 5. Take the monopolistic practices, for example, or combinations in restraint of trade. I think every lawyer must know

that the prohibition against combinations in restraint of trade has been avoided by the use of the State corporation. Is not that true? Take the Clayton Act, for example. I am not sure from your testimony whether you would recommend the repeal of the Clayton Act, but regardless of that, it is provided, I think in section 7, that no corporations shall be permitted to acquire the stock of another corporation when that acquisition will result in substantially lessening competition.

Mr. ALLEN. Is that in this act?

Senator O'MAHONEY. No. That is the Clayton Act. Many corporations have evaded that by purchasing the assets instead of the stock, and nothing could be done about it. It is difficult to draw a law. It is difficult to put in black and white on a piece of paper a formula that will be universally understood. That illustrates what I have in mind, that as long as the States are permitted to create the agencies that carry on interstate and foreign commerce, it will be impossible for the Federal Government to enforce the antitrust laws. All I want to put into this bill are fundamentals upon which everybody will agree. Most of those who have testified here have said: "We agree with your objectives, but we do not like the method."

Mr. ALLEN. In my humble opinion, the method of repression of corporations, in order to accomplish a somewhat needful limited result, is not a desirable method. But whether it is or not, whether we are dealing with the trust situation and combinations or contracts in restraint of trade, I have had quite a little to say. Perhaps I can say it more clearly if I read what I have to say.

Senator O'MAHONEY. I am sorry to have interrupted you.

Mr. ALLEN. I do not mean that. I want to save the committee's time and make it as succinct as I can. This is what I have said to express my view before I came here, and I think it would still be my view.

Even if the conditions imposed in the license look to the future in their operation, the act means, if it is to be effective for carrying out its declared purposes, that the Commission must follow its existence from year to year, and from month to month, and even from day to day. Furthermore, considering section 3 by itself, without reference to the conditions to be contained in the license, it is futile to have the applicant make statements in great detail with regard to the consideration paid for its stock unless the Commission is to make a real investigation as to the truth of such statements. This is implicit in the declared purposes of the act as will be seen by a reference to line 1 on page 8 which requires that the applicant shall file with the Commission—

such further information with respect to the operation of the applicant as the Commission may by regulation require as necessary or appropriate in the public interest or for the protection of investors.

How is the investor to be protected unless the Commission is to be furnished by the applicant with information in the greatest detail with regard to the issuance of its securities and unless the Commission itself makes a thorough investigation with regard to the truth of the statements so contained? Investors have ample facilities already for determining the general provisions relative to the organization of a corporation, the terms of its preferred and common stock, the extent of voting rights, preferences, and so forth. If the act is to be effective, it must furnish to the investor something much more specific, and this

necessarily imposes upon the Commission acts of judgments and discretion very broad in their scope.

In addition to filing the sworn statements already referred to, the applicant is required also to file with the Commission (and here I quote from page 8, commencing with line 5):

A certificate * * * that by vote of its board of directors it intends to engage in commerce subject to all acts of Congress regulating such commerce or limiting or affecting the rights, powers, or duties of corporations or associations engaged therein.

This is followed by subdivision (c) of section 3, commencing at line 20, on page 8, as follows:

Every corporation engaged in commerce and subject to this act shall have power under its charter by mere act of its board of directors to accept any charter restriction that Congress imposes as a condition of its right to engage in such commerce, the laws of any State or the decisions or order of any State authority to the contrary notwithstanding.

First, therefore, as a condition of getting a license, the applicant by act of its board of directors is required to surrender in advance all right to object to any conditions, restrictions, or other provisions that any future Congress may choose to enact even though such congressional action would amount to taking property without compensation—in effect to surrender its constitutional rights and privileges. I understand that there is a belief among some that a corporation has no constitutional rights and privileges, but inasmuch as the bulk of the intangible wealth of the individual citizens of the country exists to a very large extent in corporate form, I trust that it will be a long time before such opinion prevails.

Subdivision (e), which I have quoted, also seeks to take away from the stockholders and repose in the board of directors of the corporation the power "to accept any charter restriction that Congress imposes as a condition of its right to engage" in interstate and foreign commerce. These provisions have, I believe, received the legal sanction and approval of a very eminent lawyer, Mr. Robert R. Reed, of New York City, who testified before your committee on April 27, 1937. See his testimony on page 285 of part 3 of the Report of Hearings before the committee. My understanding is, however, that Senator O'Mahoney doubted the constitutional validity of such provisions at that time. This appears to be borne out by the quotation of Senator O'Mahoney's remarks at the bottom of pages 285 and 286 of that report. I share those doubts and I suggest that to require a corporation, as a condition of doing an interstate business and even though its sole income might be derived from that source, to accept in advance any conditions that Congress may in the future impose is grossly unfair and probably unconstitutional; and that furthermore, the charter rights of stockholders cannot constitutionally be taken away and given to a board of directors. To accomplish such a result would not be protection of the investor, but an absolute impairment of his property rights.

I have enumerated certain specific conditions which the applicant for a license must comply with before the license is issued, namely, the filing of the statement and the certificate in accordance with the provisions of subdivision (b) of section 3. The literal reading of subdivision (b) may justify the interpretation that the mere filing of such statement and certificate automatically entitles the applicant

to a license. I realize that Senator O'Mahoney, during the course of these hearings, has several times stated that the duty of the Commission is no different from that imposed upon the Secretary of State who issues a State charter to a corporation upon the filing of the requisite articles of association or other papers. If this is the intent of the act, it is difficult to see what the purpose is in requiring the applicant to file the voluminous documents, which it would be necessary for him to file, unless the Commission is to examine these documents and to determine from them whether the applicant is entitled to its license.

Is it not implicit in the act that the Commission must determine, for example, whether the stock of the corporation has been fully paid; whether the terms on which its securities have been offered to the public have been fair and reasonable and with a full disclosure of the facts; whether the property taken by the applicant at the time of its organization and the consideration paid therefor is fair and adequate; whether the promoters who organized the corporation have dealt fairly with the investors; whether the personnel and salaries of the management are such as the Commission would approve; whether the corporation charter and bylaws amply protect the investors; whether the contracts made with the promoters and with financial interests with respect to the organization or management of the applicant have been fair and equitable, and whether taking into consideration all of the information furnished by the applicant, the applicant is really entitled to a license?

Even if these determinations are not to be made by the Commission at the start and before the license is issued, it is clear from an examination of section 5, which imposes the conditions which the license shall contain, that the information embodied in the sworn statement must ultimately be used and will be used by the Commission to help it in determining whether the conditions imposed upon the licensee have been and are being performed. I will refer to these conditions again later. I am only adverting to them now to indicate that the duties of the Commission with respect to the issue and revocation of licenses impose upon it wide discretionary powers entirely different from the automatic administrative duties imposed upon a secretary of state or a commissioner of corporations under our State laws. And even if this were not so, as the act now stands, the applicant must, as I have pointed out, submit to any future regulations that Congress may impose and subject itself to all future discretionary action which Congress may in the future empower the Commission to exercise.

But, aside from the conditions imposed upon the applicant already referred to, there is one unmistakable condition which the act expressly requires that the applicant shall comply with and which necessarily involves the exercise of a discretion by the Commission of such scope and of such uncertainty as to its operation and effect as to involve the broadest kind of regimentation and the exercise of judicial powers which it frankly seems to us should not be given to any administrative body. I realize that in saying what I am about to say I run counter to the views of Senator Borah, who has made a lifelong study of the matters which I am about to discuss. While my remarks are designated according to the terminology of these hearings as "testimony," it obviously will be opinion evidence only and I trust that the positive-

ness of my statements will not exceed the bounds of courtesy and modesty.

I am referring, of course, to the provisions of section 4 of the act, which provide that no applicant shall be entitled to a license:

(a) If it is an unlawful trust or combination in violation of the antitrust laws as designated in section 1 of the act of October 15, 1914, including any amendment of such laws:

(b) If it is a party to any contract, combination in the form of trust or otherwise, or conspiracy in restraint of commerce in violation of such laws; or

(c) If it is monopolizing or attempting to monopolize or combining or conspiring with any other person to monopolize any part of such commerce.

Senator O'MAHONEY. That is the law, is it not?

Mr. ALLEN. That is the law.

Senator O'MAHONEY. You would not recommend the repeal of that law, would you?

Mr. ALLEN. I would certainly recommend a clarification.

Senator O'MAHONEY. Do you mean such a clarification as would deprive it of its effectiveness, or one which would make it more effective?

Mr. ALLEN. One which would make it more effective. Tell the businessman what he can or cannot do. I touch upon that at a little greater length farther on in my statement. But what are the trusts and monopolies doing that is wrongful today? Should they be entirely abolished? To what extent should they be permitted to control production or limit production, or agree on the control of production? To what extent should they be allowed to fix prices, if at all? The theory under the N. R. A. was that it was helpful to eliminate that kind of competition.

Senator O'MAHONEY. The theory of the N. R. A. was that businessmen should be permitted to agree among themselves and fix prices.

Mr. ALLEN. That is my theory.

Senator O'MAHONEY. You believe that is a good policy; do you?

Mr. ALLEN. Mr. Ballinger comes here this morning, like waving a red rag before a mad bull, and says there should be severe punishment meted out to these corporations. If you read the testimony of these witnesses—most of them, I think all of them who testified last year, who were in favor of the bill that was then pending—you will find that they had the most diverse views as to what should be done about the trust and monopoly problem. As I remember the testimony of Mr. William Green, he seemed to be in favor of the elimination of that anarchistic system of competition.

Senator O'MAHONEY. Do you mean to imply by the use of the word "anarchistic" that you also condemn this free competitive system?

Mr. ALLEN. I am not sure that I do quite as much today as I did 10 years ago. I thought the principle of saying that businessmen might get together and say they would not sell any goods below a certain figure of cost was healthy for industry, healthy for everybody, healthy for labor. I have some theories of my own about that.

Senator O'MAHONEY. That was the theory of the N. R. A. when it was declared to be unconstitutional, and the decision of the Supreme

Court was received with hosannas in the very circles that condemned the competitive system.

Mr. ALLEN. One reason that I have considerable doubt about it today is that, while it worked beautifully in some industries, it worked terribly in others. In some industries some fellows would insist on cutting under, no matter what the agreement was. A good many of my business friends complained of the N. R. A. for that reason. I think most of them would have liked it, if there had been some way to prevent undercutting or price cutting and all of that sort of thing. I am not advocating one system or the other.

Senator O'MAHONEY. You are just condemning this bill?

Mr. ALLEN. And why I am condemning it is this: It has four or five different tests which this Commission will have to apply to corporations before it will give them licenses and allow them to go on permanently and deal in interstate commerce business. The United States Supreme Court has had the Sherman Act before it at various times over a period of 48 years. No lawyer is able to state at the present time with any certainty what any businessman can or cannot do under the terms of the Sherman Act.

In the February number of the Harvard Law Review is a very interesting article—interesting because it is so brief—which traces the history of the construction of the Sherman Antitrust Act from the time the first two decisions under it were handed down. At first, the Court seemed to look upon bigness as the crime which was dealt with.

Senator O'MAHONEY. You know that in the first real case, do you not, the *Knight case*, the suit brought by the Attorney General failed because the Court held it was a combination in manufacturing and not of trade, and was not within the scope of the congressional power. But William H. Taft, after he had retired from the Presidency and was lecturing at Yale, prepared a book upon the antitrust laws, and in that he said it was his opinion that the *Knight case* failed largely because of the faulty pleading, because it was not alleged in the pleading that the combination of the manufacturers had an effect upon interstate commerce. He implied in his opinion, at least, that if that allegation had been made in the pleadings, the first *Knight case* would have been sustained and an injunction issued against the combination.

Mr. ALLEN. I am not familiar with what Mr. Taft said. I do not think it is of particular interest, so far as this bill is concerned. That was a discussion of what reason or reasons caused the courts to convict the defendants in some cases and failed in others.

Section 4 in subdivision (b) goes on to authorize the Commission to deny the application for a license if by reason of this section it finds that the applicant is not entitled thereto. Subdivision (c) subjects the ruling of the Commission to judicial review.

If the Commission had only one or two cases a year as to which it was required to make the determination required by this section, it would have its hands full. From the mere point of time consumed, the task would be a stupendous one. As I have said, the trail recently concluded in Wisconsin in which it was found that certain oil companies had wrongfully combined to fix prices among themselves (a comparatively simple type of restraint-of-trade case) took over 3 months to try and is reputed to have cost the parties several million

dollars to try. I presume that if the Federal Trade Commission undertook such a task to determine whether an applicant was entitled to a license the case, according to the ordinary practice of the Commission, would be referred to an examiner, who would report the testimony and his findings thereon to the Commission, and the Commission would then proceed to hear exceptions to the examiner's report. It is obvious that the simplest case would take a long time and that the Commission would have opportunity to do little else. It could not go into the matter casually or summarily with justice to the applicant or to the public, especially when it is remembered that the right of the applicant to do any interstate or foreign commerce is at stake. In fact, its very life is at stake. Pending the hearings and pending the determination on appeal by the Circuit Court of Appeals, the investors in such a corporation would be uncertain as to whether their securities would be of any ultimate value or not. The injustice to the corporation itself, the havoc that it would create in the security market, would seem to give us pause before adopting a law so drastic in its effects.

But consider also that instead of one case or a few cases the Commission has to determine in 130,000 cases whether a trust or combination exists, or any act in unlawful restraint of trade has been committed. The law schools of the country would have to be enlarged to prepare a sufficient number of lawyers to make the necessary determinations.

But the time element alone is perhaps not the most important one to be considered in this connection. I do not need to suggest to this eminent body that the determination of whether a corporation is violating the Sherman Antitrust Act or the Clayton Act is one of extreme delicacy, to say the least. The provisions of section 4 of the act seem to embrace a reference to the Sherman Act itself adopted in 1890 (this is incorporated by reference in section of the Clayton Act of October 15, 1914) as well as the Clayton Act itself, any amendments to the Sherman Act or the Clayton Act, which amendments would include one section at least of the Robinson-Patman Act, and also in the last clause an undefined region of illegality described as "monopolizing, or attempting to monopolize, or combining or conspiring with any other person to monopolize, any part" of interstate or foreign commerce. Discussion of the advisability of imposing such conditions upon a corporation desiring a Federal license would involve a consideration not only of law but of the underlying economic concepts that induced the making of the law.

Economically speaking, what trusts or combinations are good or bad? What contracts, which, to some extent, restrain trade, are allowable? Are price agreements valid at all, and if so, to what extent? Is the doctrine of the NRA as to price regimentation and production control and similar matters to control, or is the proper policy to allow and foster an anarchistic competition in trade and commerce? Was the theory that seemed to underlie the testimony of Mr. Baruch, when appearing before the Senate Unemployment Committee, to the effect that monopolies have a habit of destroying themselves, from which it would seem to follow that legislation accomplishing their destruction was not necessary, the sound one, or should all monopolies be legislated out of existence whether good or bad? What, economically speaking, do we mean by a monopoly?

Do we refer to natural monopolies, such as the control of molybdenum or to created monopolies brought about by legal mergers? There mere mention of these different theories is sufficient to disclose the underlying uncertainty and the impossibility of summarily disposing of the question as to the desirability of doing away with all restraints, of destroying all monopolies, and doing away with all combinations and contracts in the restraint of trade.

Aside from the economic uncertainty, there is the legal uncertainty involved in construing already existing statutes. The Sherman Act has been on the statute books for 48 years, but the Supreme Court has not made a satisfactory definition of its scope, or one which would enable a corporation to plot its course. The authors of a note in the February issue of the Harvard Law Review, at page 694, succinctly describing the situation with regard to this act, said:

Sketchy and ambiguous, the Sherman Act was in 1890 hardly more than a legislative outline for judicial law-making compelling the courts to amplify, if not invent, economic policy, a task demanding the highest competence in the theory of an alien discipline. Additional difficulties in the way of developing a consistent economic rationale arose from the nature of the judicial process which necessarily left to chance and the strength of the "trust-busting" policy from administration the order and importance of the problems brought to the courts.

The subject is also discussed at length in Mr. Pound's article on the Common Law and Legislation, written in 1908 and appearing in 21 Harvard Law Review, 383; and in Herman's Economic Predilection and the Law, published in 1937 in 31 American Political Science Review, 821, and in Fuch's Alternatives in Government Control of Economic Enterprise, published in 1936 in 21 Iowa Law Review, 325. Is it to be expected that any business man, or even any lawyer advising him, in view of this uncertainty in the legal situation could safely predict whether a corporation would ultimately receive a license from the Federal Trade Commission under this Act?

The Clayton Act of October 15, 1914, is of course more specific in its terms. In some respects it seems to run counter to some of the theories with regard to price fixing inasmuch as it seeks to prevent price discrimination. The litigation over this act is, however, very extensive in scope. Like all laws attempting to lay down economic concepts, it is difficult of interpretation.

Section 4 of the act under consideration, however, by including amendments to the Clayton Act, also embraces one section of the Robinson-Patman Act, approved June 19, 1936. This act attempts to be even more specific in its terms than the Clayton Act. Lawyers and writers, however, have been discussing the true construction of some of its provisions ever since it was enacted. I hold in my hand a bibliography of the articles relating to the Robinson-Patman Act and principally to its construction which have appeared in the leading legal periodicals. It does not include the various books that have been written upon the subject. Yet this bibliography covers one and one-half typewritten pages of brief paper. I do not know exactly how many books have been written on the Robinson-Patman Act, but I do know of at least six. I have before me a volume that was written shortly after the law was enacted, by Nelson B. Gaskill, formerly a member of the Federal Trade Commission, which is somewhat non-technical in its nature, and was written evidently for the guidance of businessmen. It is entitled "What You May and May Not Do Under

the New Price Discrimination Law." It comprises, however, 63 pages. In his conclusion Mr. Gaskill states:

It may be that in some particulars this review is incomplete or that someone may fail to find in it the specific answer to his problem.

I can swear that is true.

This is unavoidable, but it is hoped that principles have been stated which will enable the reader to work out his own solution of his particular problem.

The trouble with that is that you are simply dropping in the hands of another tribunal, the Federal Trade Commission, the very problem which the courts have been struggling with for 48 years and have been unable to solve. You are not only doing that, but you are saying to the businessman: "Until you satisfy this new tribunal that you are not violating any of the laws, which are inconsistent with one another, you cannot have a license to deal in interstate commerce or foreign commerce." That is absolutely prevented.

Now, it is true that the corporations may have a temporary license which will carry them along, so far as the immediate situation is concerned, but what about the man behind the gun who is planning the policies of that corporation?

Senator O'MAHONEY. What is the inconsistency in the law to which you refer?

Mr. ALLEN. I say nobody knows whether he is committing an act which violates the law.

Senator O'MAHONEY. I just understood you to say these laws that are on the statute books are inconsistent.

Mr. ALLEN. They are somewhat inconsistent with one another. The Miller-Tydings Act is certainly inconsistent with the principles of the Sherman Act. It is certainly inconsistent with the principle of it. If you make the agreement that act permits you to make then you are violating the Sherman Antitrust Act and the Clayton Act. What is going to be our economic policy? Is it going to be that announced by Mr. Ballinger, is it going to be that of the N. R. A., is it going to be that advocated by Mr. William Green of the American Federation of Labor, or is it going to be somewhere in between all of those? I do not know. I would not know how to tell a client whether he would be permitted to buy a little local industry in Providence, because if it was an industry with a product not very widely distributed, I do not think any lawyer would know how. If I advise him wrong, he is not only subject to fine, he is not only subject to imprisonment, which is bad enough, but he never will get his Federal license.

I am not a student of the Robinson-Patman, but one of my partners has made some study of it. It is a terrible thing in some instances to tell a client what he can do and what he cannot do under that act. Yet if a client, under this act now before us, violates this Robinson-Patman Act, he cannot get his Federal license. It is all right to fine or imprison men when they know what the crime is, but to say they will be subject to capital punishment, it seems to me, it is a penalty you should not impose upon business.

I have spoken of the man behind the gun. His problem is terrible. He does not know what to do. I talked to a gentleman this morning who said: "My gracious, if this law goes into effect, I can't run my business. I can't go on. I will have to stop." Of course, people will make extravagant statements of that kind, but I think there is

an underlying truth in a good many of them. You are up here on Capitol Hill, and you go home and talk with your friends and neighbors and clients, but we have it day after day, and we know that these people are scared to death. They say to us: "Good Lord, we have got all we can put up with. We don't want another blow such as this act will deal us."

Senator O'MAHONEY. I am afraid you are right, but I do not think anybody need be afraid of Senator Borah.

Mr. ALLEN. In one sense; no. We do not want this act or any other similar act passed at this time, because we do not know what the scope of it will be. Look at the investor. The sound, solid investment business in the city of Providence is almost extinct. It is not there. People do not know what to buy or when to buy, or what it is safe to buy. Government bonds have always been considered safe, but a good many people fear the tendency is toward inflation. That is what I hear from everybody I have talked to. The result is that they will probably buy stock in our big corporate institutions.

Harvard, Yale, Leland Stanford, and I suppose all the big educational institutions in the country that have endowment funds are putting some of their funds into common stocks. Why? Because they do not know where else to go. Give us more than a breathing spell. Say, "We have laid down the rules for 5 years, and we are not going to change them. We are going to make a study of this trust and monopoly situation. We are going to find out what the facts are."

If I may stop myself for a moment here, Mr. Ballinger made a very dramatic presentation of his case this morning. He and others like him talk about this great concentration of wealth in the hands of a few big corporations. He spoke of the 200 large corporations. That is where the investors have their money. There are 25,000,000 stockholders. I suppose there are 200,000 or 300,000 owners of stock of General Motors, and probably 30,000 or 40,000 in Armour & Co., as well as a large number in General Electric, and American Telephone & Telegraph.

Suppose you pass a law like this that threatens all the corporations, all the big ones, and how are they going to feel? That is what gentlemen like Mr. Ballinger, who is perfectly sincere, says should be done. He says they ought to be punished, punished severely. But this act would take away their very life blood. They can't live without going into interstate commerce.

Here are 25,000,000 investors, and all these insurance companies in which we all have some interest, charitable institutions, schools, and colleges. Everybody is interested in this problem. What can you say to these people under these uncertain economic conditions, no two men agreeing on what they mean by "trust" or "monopoly"? It is a serious problem.

Senator O'MAHONEY. I think there is nothing in the antitrust laws or in this bill that may be considered an attack on size.

Mr. ALLEN. I do not think so, but Mr. Ballinger seemed to think so.

Senator O'MAHONEY. He seemed to think that size is an evil in itself. That is not in this bill. We are talking off the record, so far as legislation is concerned. I would not put in the bill anything which would lead to the conclusion that General Motors is a trust. I think

if there is competition in any field, it is in the field of automobile manufacturing.

Mr. ALLEN. It seems so to me.

Senator O'MAHONEY. So that corporations of that kind would not be affected by this legislation.

Mr. ALLEN. Of course, it comprises in a nutshell only the organizations which are trusts or monopolies, but you have the expression "restraint of trade."

Senator O'MAHONEY. That is John Sherman's expression, not mine.

Mr. ALLEN. However, that may be, we are not doing any of the work we usually do. We are doing nothing but defending our clients against something or other.

Senator O'MAHONEY. I hope the United States attorney is not on the other side.

Mr. ALLEN. No. The labor organizations are on the other side. Our competitors under the Robinson-Patman Act are on the other side. They are sneaking over to the Federal Trade Commission and saying: "Look here, you had better look into John Doe. He is doing something we do not think is right." We do not like it. That is not the sort of business a lawyer likes to have. It did not use to be so. That is what most of the law business is at the present time.

Senator O'MAHONEY. You do not believe there should be a national rule for national commerce?

Mr. ALLEN. I believe that with all the plants of the General Motors scattered throughout the country, the plants of the General Electric Co. all over the country, the United States should exercise its police power over the operation of those companies. I do not myself see why the United States should go into the business of protecting investors or buyers of securities. I do not think they need any more protection than they have now.

I started to say a word about this prospectus to which I referred a while ago, with securities to be sold in interstate commerce. There are 50 pages of material which the investor is obliged to see, if the broker does his duty, before he purchases any new securities. In addition to these 50 pages, there is a large amount of additional information on file with the Securities and Exchange Commission. There is no way by which you can protect a man who is grossly negligent or who is a fool in the purchase of securities. He has got to take his own chances. If anybody deceives him, he has all the power of the courts behind him to prosecute and punish him. I know we have a pretty good class of those people in Rhode Island and Connecticut and Massachusetts, but here you hold a club over every man who sells securities in such a terrifying way that he is practically committing suicide if he undertakes to say anything outside of what is within the 50 pages of his prospectus, if there are 50 pages in it. Not only the corporation issuing the securities, but the officers and directors, as well as the brokers, are responsible for any misstatements.

Senator AUSTIN. That is not the worst of it. Take a corporation that finds it necessary to refinance itself, and it is not necessary to employ a broker. Nevertheless, it comes under the terms of this act, and it must go through this expensive process to which you have referred, merely to issue stock to perhaps a limited number of people. As a result, what happens? There is so much expense and delay connected with it that, for the most part, they will find some other method

of refinancing, perhaps by borrowing money. So that it operates upon the individual citizen. It constitutes a grave check on the development of business or investment by private capital. I am talking of some concerns I have seen that are operating under those conditions.

Mr. ALLEN. Just as an illustration of what it will do, there are photostatic copies of the papers filed by one corporation in order to get out a small issue of stock. It cost \$60 to have the copies made. What it cost in the way of attorneys' fees and accountants' fees is really staggering. Only the large corporations can afford it.

If the last clause of section 4 (a) includes within its scope a type of restraint of trade not hitherto defined as illegal by any statute and furthermore includes in its scope any attempt to restrain trade, the uncertainty and injustice involved in this provision of the law is further emphasized.

I am not, of course, defending violations of laws relating to this subject. I am not trying even to suggest whether such laws are all wise or unwise. I imagine that the members of this committee would have different views upon that subject. I am simply suggesting that to make compliance with such laws, involved as they are in obscurity and uncertainty, a condition of continuing to do an interstate or foreign business heretofore conducted and perhaps the sole source of the corporation's revenue is a policy which could not only be terrifying to the corporation itself but to every investor in its securities.

Senator O'MAHONEY. I suppose you know that under the corporation laws of some States it is possible for common stockholders, and in some cases only directors, to issue new types of stock and thereby deprive prior stock of rights and seniority, and certainly would depreciate the value of it?

Mr. ALLEN. I have no knowledge that, by intricate means of chicanery, the rights of stockholders under the most carefully drawn corporation laws cannot be violated.

Senator O'MAHONEY. Do you not think we should take every precaution we can to prevent in the first instance the use of those devices by making them illegal ab initio?

Mr. ALLEN. I do not see in the four corners of this act any provision that would specifically prevent that. It seems to me, if that sort of situation is to be prevented, it has to be prevented by a wide exercise of discretion on the part of the Commission.

Senator O'MAHONEY. Your objection seems to me to be based on an argument very similar to that which you advanced with respect to the depreciation of the value of stock. In other words, the corporate directors may change the contract. Of course, that whole point is based upon the doctrine laid down in the *Collins* (?) case and the *Charles River Bridge* case, as to whether or not the State has the authority to alter the conditions upon which a public body operates. My feeling is that if in the beginning you write it into the charter, there could be no doubt of the authority of the State or Federal Government to make a change in the contract. If you do not write it into the charter a very different condition will arise.

Mr. ALLEN. Since that time I think the State retains that control over the corporation.

Senator O'MAHONEY. That is right. Therefore, it is written in this bill.

Mr. ALLEN. That is quite different from saying they will accept in advance, will agree to accept in advance every act of the Congress.

Senator O'MAHONEY. I see your point. You mean you would forego the objection to the reservation of the right on the part of the Government to alter the charter, but you would reserve to the corporation the right to accept or reject that change?

Mr. ALLEN. Yes.

Senator O'MAHONEY. I think there is a good deal of basis for that.

Mr. ALLEN. While the purposes sought to be accomplished by the act are in many respects admirable, it comprises in its scope many purposes of a highly controversial nature which ought not to be embodied in one law but which should only be considered and dealt with separately by legislation specifically directed against each particular evil sought to be prevented.

This point brings us directly to a consideration of the provisions of the section 5 of the act. This section provides that every license issued under the act shall contain and the license shall be subject to certain conditions—11 conditions in all.

The first three conditions relate to the relations of the licensee with its employees. With most of these labor provisions probably all of us would agree, so far as the purpose to be accomplished is concerned. I desire to be understood as not myself disapproving of any of them. They forbid any discrimination against female employees with respect to rights of pay or rights granted, or in any other manner; they forbid the employment of minors under the age of 16 and the employment of persons less than 18 years of age in a hazardous occupation or employment between the hours of 7 p. m. and 7 a. m.; and they recognize the right of the employees of the licensee to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

So far as the right of the employee to organize and bargain collectively, most employees of labor certainly would contend that the rights of labor are more than sufficiently secured already by the provisions of the Wagner Labor Act. I doubt if all persons would agree with the provisions forbidding discrimination of any kind against women in industry.

Mr. William Green, in his testimony before the committee on January 29, 1937, Report of Hearings, Part I, page 105, said that there are probably three million or more women employed in industry, a large percentage of whom, he stated, were married women. Yet, in the State of Rhode Island, the Democratic Administration some time ago required the discharge from the employ of the State of every married woman. Here again I am not pronouncing upon the justice or injustice of such a policy. I am merely indicating that this is one of the controversial questions which ought to be settled on its merits by legislation expressly directed to it. In the proposed act, however, it is made an absolute condition of the corporation's license to do business. Any breach of that condition, when established, results in a forfeiture of the license. There is no discretion about it. Be the breach large or small, important or unimportant in its results, the license is automatically revoked as soon as the breach is established. This would mean that any disgruntled employee, who could discover

what he regarded as a breach of any of the labor conditions of this act, could at least threaten proceedings which would imperil the right of his employer to transact business.

The next condition, subdivision (d) of section 5, provides that upon order of the Commission the licensee will refrain from dishonest or fraudulent trade practices, from unfair methods of competition, from violating the antitrust laws, and from monopolizing or attempting to monopolize any part of commerce. The latter portions of this subdivision are embraced in the provisions of section 4 which in effect forbids a license to be granted to a corporation that has been guilty of any of such violations. The condition in question possibly broadens the scope of the section by including fraudulent trade practices and unfair methods of competition. A breach of this condition results in a forfeiture of the license. Here again it would seem that the sensible way to handle such subjects would be to define for the benefit of the businessman what trade practices he is permitted to adopt.

I had the privilege of hearing Senator Austin last week on the floor of the Senate advocating a thorough study and investigation of the theory and practice of monopolies and trusts. I understand that the President has, himself, suggested that this be the next step in the control of trusts and monopolies. This course, I believe, would commend itself to every business man in the country. Let us see, first, what the facts are and upon the basis of those facts adopt legislation which will be so specific and clear and unmistakable that he who runs may read.

It ought not to be a subject of debate, as Mr. Gaskill in the volume which I have referred to indicated was the case among lawyers and laymen, as to what the businessman "may and may not do" in connection with the transaction of his ordinary business. Certainly a business corporation ought not to lose its charter or its right to do business for the commission or the omission of an act which is not *malum in se*. Forbid or compel such acts, penalize the infraction if you will, but do not inflict capital punishment upon the offender.

The next six subdivisions of section 5 (c to j, inclusive) seem to be devoted to protecting the stockholder. I submit that these provisions get us into a controversial field which ought not to be covered by an act of this kind. I do not believe that any one of these provisions would meet with the whole-hearted support of each one of the members of this committee and as to some of them, there would seem to be grave doubts as to their constitutionality. In some respects they do not go as far perhaps as the common law would go in the protection of the stockholder. I believe that the subjects covered, however, whether good, bad, or indifferent, are properly within the scope of either the Securities Act of 1933, or the Securities Exchange Act of 1934, and that the administration of such matters might more properly be left to the Securities and Exchange Commission rather than to the Federal Trade Commission. A very brief survey of them will illustrate some of the points above suggested.

Senator O'MAHONEY. Do you think you could protect a stockholder of a Delaware corporation who lived in Rhode Island by a suit in the Rhode Island courts?

Mr. ALLEN. It would depend, of course, upon what happened to him. If it was a question of his being defrauded by misrepresentation in the sale of securities, he naturally would have to go to the place where the defendant was in order to sue.

Senator O'MAHONEY. Suppose it were an alleged abuse of corporate power.

Mr. ALLEN. If it were an alleged abuse of corporate power on the part of the officers or directors of the corporation, if they did some ultra vires act they had no right to do, I suppose he would in that event have to go to the State of Delaware. But I do not believe you are going to accomplish it in this situation here, because you are not changing the system of incorporation with respect to any corporation already in existence.

Senator O'MAHONEY. You could sue in any Federal court in the land for any violation arising from any of the conditions laid down in the Federal law.

Mr. ALLEN. If that is what you want to do, I think you could do it much more simply by changing the statute relative to the jurisdiction of our Federal courts. For one reason or another, it appears clear that you cannot sue in a Federal court today unless you go to the place where the defendant lives in that jurisdiction. Of course, there would be the question that you would have to get service on him before you could sue him, anyway.

Senator O'MAHONEY. Do you think you could effect that change by statute?

Mr. ALLEN. This law is a statute.

Senator O'MAHONEY. I mean the change you are speaking of.

Mr. ALLEN. I think you could, if it was within public policy to do it. Of course, it is a question of whether the Congress would approve the amending of the law relating to the jurisdiction of our district courts in quite such a fashion as that. It would mean you could compel a defendant to subject himself to service if he happened to be visiting relatives in California, and where both the plaintiff and defendant lived in Rhode Island or Massachusetts. I do not know that I would have any objection to it, if Congress wanted to do it.

Senator O'MAHONEY. If a corporation was created by the State of Delaware to engage in interstate commerce throughout the Union; do you not think it ought to be susceptible of suit wherever it could be reached by a stockholder or anyone having a claim against it?

Mr. ALLEN. A Delaware corporation in Maryland or Massachusetts, in order to legally do business, would have to accept the secretary of state or some individual or attorney for the purpose of service of process. You could reach that corporation wherever you could find it, wherever it was actually doing business. I would not think it was fair to be able to provide that you could sue a Delaware corporation with offices in New York anywhere in the United States.

Senator O'MAHONEY. I cited a case the other day of the Allied Stores Co., which was organized by the State of Delaware, but had no business in Delaware at all.

Mr. ALLEN. I intended to look that case up, but I found there was no such reference to it that I could easily locate it. I wonder if you could give it to me.

Senator O'MAHONEY. I do not think the case has been reported. The decision was transmitted to me by a lawyer in New York.

Mr. ALLEN. Subdivision (e) only applies to licensees organized after the date of the enactment of this act and requires that a corporation shall have its chief place of business and its executive offices and that the meetings of its board of directors or trustees shall be

regularly held within the State under the laws of which the corporation is organized. This, of course, is a wide departure from present practice and would, I believe, place a great handicap upon all corporations organized hereafter as against those corporations which are already existing, and would not be any great protection to the public or the investor and in many cases would result to his decided detriment. Suppose, for example, a mining corporation is to be organized in some State, where the corporation laws are extremely defective with respect to the payment in full of the capital stock, or are very hampering with regard to the kinds of securities that may be issued. Certainly the investor would be ill-served in the first case, and the productive use of capital would be greatly impaired in the second case. A new and worthy enterprise might be entirely prevented from obtaining adequate capital if such were the rule, and future investors would certainly suffer because of the discrimination afforded to corporations already in existence.

Subdivision (f) provides that the licensee shall have only such powers as are incidental to the business in which it is authorized to engage. This provision would seem unnecessary as no corporation without it would be authorized to do an *ultra vires* act. This subdivision also prevents the holding of stock in any other corporation. Certainly this gets us into a controversial field. Corporations having adequate surplus have to invest their surplus funds somewhere, and with the low rate of return at the present time on bonds and debentures and other fixed interest-bearing securities, it is regarded as legitimate, certainly by most, to invest corporate funds to a limited extent at least in so-called equities. To those economists who believe that a continuation of an inflationary trend is inevitable, the investment in fixed interest-bearing securities at the present time seems most unwise. I am not posing as an economist or a financial or investing expert. I am solely suggesting that the broad rule laid down in this statute is one that may well be open to argument and should not be embodied in a statute which involves the right of a corporation to transact its otherwise legitimate business.

The provision of subdivision (f) that provides the corporation shall have no power outside of the jurisdiction of its incorporation which it does not have within such jurisdiction seems to be unnecessary as under the present law a corporation cannot do an *ultra vires* act outside of the State of its incorporation any more than within it.

This subdivision (f) also requires the making of a full accounting of the affairs of a subsidiary corporation to the stockholders of the licensee and a full accounting of the affairs of the licensee to the stockholders of the subsidiary. A duly certified copy of all such accounts are required to be filed with the Commission. Inasmuch as the Commission may revoke the right of the licensee to do business for a breach of this condition, the clause certainly gives to the Commission wide supervisory powers over the accounting practices of the corporation. These powers would be better left to the Securities and Exchange Commission if they are to be exercised at all. This subdivision should be read in connection with section 13 (a) which authorizes the Commission to determine the particular system of accounts that the licensee shall keep and it is given access to all books and records of the licensee. If it takes 3 miles of shelves to contain the original statements, what structure will be large enough after a few years

under such a law to house the records, and what an army of employees will be necessary to examine the records of 130,000 corporations, to say nothing of the duty of ascertaining whether any of the 11 conditions of the license imposed under section 5 have been violated.

Subdivision (g) provides that the stockholders of the licensee shall have an equal right to vote the number of shares held by them respectively notwithstanding any provision of its charter for the issuance of nonvoting stock. It is submitted that with respect to corporations already in existence and doing an interstate business, this requirement would be a taking of property without due process of law. It has been universally held, so far as I am aware, that the right to vote stock in a corporation is a property right which cannot be taken away except under due process of law and upon compensation being paid therefor. I do not find that this proposition has ever been stated by the United States Supreme Court, but it seems to be accepted as elementary by all the text writers and by all of the Federal and State courts that have passed upon the question.

The provision which we are discussing does not, it is true, attempt to take away directly the votes of any stockholder. It does, however, give to stockholders who by their contract were not previously entitled to vote a voice in the management, irrespective of the provisions of such contract. Balance of power is shifted and the rights of the voting stock are substantially affected. In the words of the court in the *Lord case*: "To so undermine that right as to essentially affect its power of protection would, under ordinary circumstances, undermine the right to property involved in the ownership of stock."

It is true that stockholders may be deprived of voting rights under corporate charters for sinister and perhaps even fraudulent purposes. Such cases, however, are few and the intricate machinery of this act is certainly not necessary for the protection of such stockholders. In the ordinary case, the granting to common stockholders of exclusive voting right (to be terminated for failure to pay dividends on the preferred stock or for other equitable reasons) is meritorious. To prevent this being done would seriously limit the development of new industries. Suppose, for example, that the inventor of a process, a man who has ingenuity and ability in mechanical lines is without capital. He associates with himself another man of ability who will furnish skill in the financial management and in the operation of the business. He also is without funds. The two entrepreneurs go to some of their moneyed friends and ask them to invest money in the corporation. These moneyed friends may have no mechanical ability and no managerial capacity. They are willing, however, to help the enterprise by putting in their money and taking for it a first-mortgage bond or debenture earning 4 or 5 percent. Certainly no one could reasonably claim that the fact that they, under their contract, forego the right of management of the corporation has in it anything sinister or inequitable. Suppose, instead of taking bonds or debentures, the contributors desire that the corporation start with ample capital and they are willing to take a nonvoting preferred stock yielding 6 or 7 percent. Is there anything wrong in such a situation that should be corrected by legislation? If so, the practice of 75 years or more must be reversed.

It would seem clear that all such arrangements are fair if they are knowingly entered into by the investor and that, if the corporation issuing such nonvoting securities is subsequently greatly successful, the common stockholders, comprising in the assumed case the inventor and his managerial association, are entitled to the full benefit of their bargain. They are entitled to reasonable salaries for managing the corporation and to the profits over and above that necessary to pay the interest or dividends on the prior obligations. To deprive them of their position produced through the exercise of their own skill and ability would certainly be taking from them their property without compensation in the most obvious way.

But it may be said, ignorant stockholders go into enterprises of this kind without realizing what their actual rights are. This may have been true to some extent in the past, though even in the past we do not think it is the ordinary case. As to the present and future and with respect to securities sold in interstate commerce, the investor is amply protected today by the provisions of the Securities Act of 1933 and by the administration of that act by the very able members of the Securities and Exchange Commission; and if such investors fail in the future to be adequately protected because of some loop-hole in the law, that law, it seems to us, should be amended and the difficulty cured in that way rather than by the enactment of a new body of law.

As to the conditions imposed in subdivision (h) forbidding the taking of emoluments in addition to regular compensation except by vote of the stockholders at a regularly called meeting, it again seems to us that, admirable as is the purpose to be served, the exact limitations of the right to compensation vary so much in individual cases that this matter, if it is to be regulated at all, should be dealt with by a specific law covering this particular subject and after full consideration of the various situations that may possibly exist in the cases of individual corporations. Certainly a corporation's right to do business should not be forfeited by reason of the breach of such a condition. Such a forfeiture would be a punishment not so much to the wrongdoer as to the innocent stockholders whose intention it is to protect.

Some reference has been made to the fact that some States, as their laws now stand, may issue charters to corporations authorizing them to do an interstate business and in effect preventing them from being controlled by the Federal Government because of the issuance of such charters. This is clearly a misconception. The charter issued by a State simply creates the entity. The State is the parent; so to speak, of the corporation. The creation of the corporation, however, in no way takes the entity out from under the police power of the Federal Government or the police power of the several States.

I do not need to argue this proposition before the members of this committee. If the Federal Government passes rules and regulations which are legally and constitutionally applicable either to corporations or natural persons, neither the State, in the case of the corporation, nor the parents, in the case of the natural person, can do anything to prevent the adoption of such legislation, nor can it free the corporation in the one case or the natural person in the other from the operation of such legislation.

In reading through the testimony of various witnesses, I have been struck with the fact that they apparently charge to laws of the various States creating corporations, all of the bad results that may follow

from faulty human nature and the failure to obey the ordinary rules of honest conduct. If there have been abuses in the past, many of these have been corrected by punitive laws of various kinds. The courts hold directors and officers of corporations to high standards of conduct. The State legislatures and Congress can undoubtedly do more. But the policy of attempting to bring about even the most admirable results by punishing the stockholders and investing public for inadvertent or even intended wrongs committed by officers and directors is one that seems to us obviously unsound.

The provisions of paragraph (j) which allow a stockholder of the licensee to deliver his proxy to a person certified by the Civil Service Commission as a "certified corporation representative" must be intended to correct some abuse which is not prevalent in my section of the country. It seems offhand like building up another unnecessary bureau. It might well tend to encourage frivolous litigation. It might hamper stockholders in choosing their own representatives, either lawyers or accountants. We think it might easily be subject to great abuses.

The foregoing covers the six provisions designed for the protection of stockholders. The last subdivision of section 5, subdivision (k), provides that "the licensee shall be subject to, comply with, and accept any requirement not inconsistent with the laws of the United States that may be made by the State of its incorporation and any requirement that may be imposed by the Congress as a condition of its right to engage in commerce." As already pointed out, we believe that this provision would be a clear violation of the constitutional rights of every corporation already existing and that has money invested in a business which includes interstate and foreign commerce. The provision would require the corporation to surrender its constitutional rights to object to any such future legislation as a condition of doing its legitimate business. Since this same provision is here repeated in substance for the third time in the act, it seems to be one of its unalterable purposes.

I also want to bring to your attention something that came to me this morning. One of my lawyer friends in Providence called me up on the telephone, having heard I was coming down here, and said he wanted to put before the members of the committee a particular situation he is dealing with at the present time. That has to do with the provisions of section 19, which require that directors shall in all cases be stockholders. I think there is something to be said in general for putting the control of corporations into the hands of persons having some financial interest in them, but when you come to make a provision as broad as that you are going to run up against the same difficulty this friend in Providence has run up against. There may be half a dozen other similar instances. I have touched on this general question before, but I wish to call your attention to this specific instance.

About a year ago one of our prominent manufacturers died. He was a fairly wealthy man and had the controlling interest in the stock of a manufacturing corporation. He had no children and left his entire estate to the Rhode Island Trust Co. in trust, a part of the income to be paid to Brown University, a part to the Rhode Island Hospital, and one or two other similar institutions.

As a result of his death the control of the corporation entirely changed. The only stockholders left were scattered over the country and never had anything to do with the management of the corporation. They had one very able fellow who owned some shares, and he continued as a director. But what could they do about the other directors? If this provision had been in effect, they would have had to put on the board three or four other relatives of the decedent who had never done anything about the corporation, had no business ability, some of them widows or their dependents maybe. They did the very sensible thing of electing the treasurer of Brown University and the counsel for the Rhode Island Hospital Trust Co., and I think an officer of that company was a trustee. That seemed to be the only thing that could be done. It lodged the management in the hands of people who had an interest in it, who were on the ground and knew how to manage it. If we had a provision in our State law like this they could not have done that. They would have had to have these other outside people act as directors.

Mr. ALLEN. I have personally heard it asserted by Senator O'Mahoney and Senator Borah in two previous hearings that I have been able to attend, and I have also discovered, from reading the testimony submitted last year to the committee, that it was several times then asserted by them that it is not the intention of the authors of the bill to provide for a regimentation of industry in even the slightest degree, or to confer upon the Federal Trade Commission any discretionary powers. I know that these assertions are made in good faith. It has also been said that the preamble to the bill contained in section 1 can be eliminated without harm to the bill itself. This may well be for the bill contains within its enacting provisions, we believe, all the powers which are necessary to control industry in a most drastic fashion.

Even if it were possible to enact a licensing bill which would give to the Federal Trade Commission only administrative duties of a very mild kind—and I cannot see that the passage of such a bill would accomplish any useful purpose whatsoever—I think that this much is clear, that if the hopes and aspirations of many of the advocates of and believers in this act are to be realized—and I refer now to the witnesses that have appeared before your honorable body—it is impossible to fulfill these hopes and aspirations without granting to the Commission the widest possible powers of regulation and control. Not only is this true, but the act subjects the licensee to the future control of Congress, which control might be even more sweeping in its provisions. Such control would have to be vested in some administrative body as a result of which we might indeed have a corporative state. If the members of the committee will examine the testimony of the witnesses who appeared before them last year they will see that the widest possible claims were made for what the Commission would be able to accomplish.

Mr. Charles A. Beard, for example, whose testimony is reported in part 1 of the report of hearings, testified on January 27, 1937, at page 72, and called attention to the great degree to which wealth and income have been concentrated in the United States due to the growth of corporate enterprises. If this concentration is an evil thing and it is intended that the Commission shall correct the evil, certainly it is necessary that I should have the power—and I believe that it

has it under this bill—to make the most drastic changes in corporate set-ups and the distribution of corporate securities. Merely to allow the Commission to issue a license upon the filing by the corporation of a sworn statement will accomplish nothing unless the Commission is authorized to do something positive and drastic as a consequence of the information which it obtains.

Mr. William Green, president of the American Federation of Labor, testified on January 29, 1937. His testimony will be found in part 1, page 87, et sequentia of the report of hearings. He repudiated the idea that the bill gave powers of regimentation to the Commission, but he admitted in answer to a question of Senator McCarran on page 99 that the power to license is the power to destroy, stating that that power was inherent within the Government at any time but that it was inconceivable that a government would use that power to destroy. Throughout Mr. Green's testimony he spoke repeatedly of the disadvantages of having a free play of competition, asserting that unrestricted open market competition produced automatic price adjustments. He criticized the maintenance of steel prices by the Steel Corporation during the depression. He referred to the fact that industry without regulation can determine how much of the return from production will go to wages and to profits. He testified at great length and he evidently felt that, by some process or other, the Federal Trade Commission, under the proposed act, would have the power to correct these so-called abuses.

Other witnesses, including Mr. Mordecai Ezekiel who testified on March 1, 1937, and whose testimony commences at page 165 of part 2, showed the great extent to which certain national corporations had increased their sales and in general their power in industry. He felt that some national legislation ought to be adopted to increase purchasing power. His testimony would lack all pertinence unless it were given in support of the proposition that this bill, upon which he was talking, would in some way effect these results. Certainly the filing of a few papers and the issuance of a license without further action on the part of the Commission could not possibly have any effect upon what Mr. Ezekiel believes should be accomplished.

Mr. Benjamin C. Marsh, executive secretary of the Peoples Lobby, testified on March 4, 1937, as a proponent of the bill. He states at page 107, volume III, that—

Because the bill is an essential preliminary to end the conditions leading to private monopoly, it is important to record that it cannot end, but merely curb, such monopoly. To end the dangers of private concentration, high tariffs, monopoly of natural resources, private credit, and patent excesses must be ended.

Obviously these large results cannot be accomplished except by the use of discretionary power on the part of the Commission of a most drastic kind.

In addition to what has been said by various proponents of the bill, we believe it is fair to glance for a moment at the Findings of Fact and Declaration of Policy, contained in section 1, notwithstanding the fact that it has been asserted that these have no binding force. If they do not represent present views as to the underlying purpose of the bill, they do represent the views of the people who made some of the earlier drafts. At some point in the future, if this bill were enacted, members of the Commission or future legislators would be sure to resort to these statements as defining, or helping to define, the

Commission's powers. They will lay the basis for future legislation enlarging the powers of the Commission.

Subdivision 2 asserts that it is not only the right but "the duty" of Congress to "control and regulate" all corporations engaged in—interstate and foreign commerce and that to effectuate the policy herein declared it is necessary and proper to provide a national licensing system.

We submit that because Congress has the power that it is not necessarily its duty to exercise all of its powers. It has the power to impose a 90-percent income tax but it does not thereby become its duty to do so. Yet, this declaration evinces the intent "to control and regulate" all corporations engaged in commerce. Regulation and control can only be brought about by active supervision and affirmative action.

Subdivision 4 asserts that the growth of corporations has effectively impaired the economic bargaining power of labor. How does licensing help the situation unless something active is to be done to help.

According to subdivision 4 of section 1 maladjustments of wealth are to be "effectively controlled or eliminated" through congressional legislation. Clearly this can be accomplished only through the exercise to the full of many powers. In section 13 (b) of the act the Commission is expressly authorized to effectuate the "declared policy of this act." This is a mandate to do much more than to follow certain defined rules.

In subdivision 6 it is declared to be the purpose of the act that—the capacity of the people to purchase commodities sold, exchanged, transported, or delivered in the course (of commerce) may be increased with consequent reduction of unemployment and correction of the maldistribution and concentration of economic wealth and power.

How can all this be accomplished unless the Commission exercises the widest powers? What blueprint has the Congress set out in the act from which the Commission could build the structure described in this preamble?

We say again that little as you may intend it this act can only result in bureaucratic control and regimentation unless it is to become a complete nullity.

As to the penalty imposed for noncompliance with the act and for breach of any condition of the licenses being far too drastic and in many instances would bear most heavily not upon the persons guilty of such violations, but upon many innocent stockholders, I believe that this matter has been thoroughly covered in the discussion of the preceding points.

I should like to emphasize once more, however, in conclusion, that in order to determine who is being hurt by drastic legislation supposed to be directed against large corporations, you must look to find the little fellow, the stockholder, the human being, with a family, with children whom he is trying to send to school or college. You are hitting most terribly the investment banker—not by any means exclusively or for the most part, the dealer in speculative securities—but the man who is selling high-class investment securities. This business has almost dried up largely through uncertainty and fear. This is no false cry of "wolf," put out for political or propagandist purposes. It is expressed to the lawyer by his client, in his office, over the luncheon table, when there is no partisan ear to hear or be influenced.

This petition, of which I have given you copies, although it is printed on formal white paper and signed in print by a large number of

trade organizations, is a cry from the heart. It represents the feeling of thousands of men and women who are appealing to you, with all the sincerity they possess, to leave business alone; to cut down, not increase bureaucratic government; to investigate, not the corporations that are providing us with our means of support, but those Government agencies that are spending our money for us in unprecedented amounts. They wish that their representatives could come down from the Olympian Heights of Capitol Hill and talk with them in their homes, and shops and offices, hear the stories of private charities and non-profit-making organizations that already are feeling the pinch of reduced contributions and falling memberships and increased needs. They frankly wonder whence comes the demand at this particular time for legislation like this corporation-licensing bill, which, whatever it does or fails to do, will cost 130,000 corporations and the taxpayers a lot of money, will swell the army of Government employees, not only for this year, but forever.

We can forget the charge of regimentation and still we say the bill is bad, not only because of its cost but because of the additional fear and despondency which the mere report of it to the floor of the Senate will surely engender. Lest you may think I am making too emotional and personal an appeal, not warranted by the mandate from my clients, please read over again the petition of January 28, which is saying in more sober and restrained fashion what I am trying to say. Undoubtedly you have had similar messages from others. As I remember it, the appeal of the little-business men was in much the same tenor, and it surely was not dictated by big business.

I thank you for allowing me so much time.

Senator O'MAHONEY. We are very grateful to you for your very comprehensive statement. You do recognize that there are some economic problems?

Mr. ALLEN. A good many of them.

Senator O'MAHONEY. I mean one big problem of stimulating private business.

Mr. ALLEN. Yes; I do.

Senator O'MAHONEY. Do you recognize the truth of the assertion that there has been a very substantial concentration of economic control?

Mr. ALLEN. Yes; although I frankly say that I have read a lot of that literature recently and, while I am not fairly versed in it, I have read Mr. Ezekiel's book and perhaps others.

Senator O'MAHONEY. Have you read the study in the Twentieth Century?

Mr. ALLEN. I have read some of them, but not all of them. I have read many extracts from them from time to time. Of course, I read a good deal of the more or less, perhaps, conservative sort of information, the publications of the National Industrial Conference Board, and the matter of profit sharing.

Senator O'MAHONEY. You recommend a study of that problem, do you not? You think it would be a wise thing to do?

Mr. ALLEN. I do. I do not think we can acquire too much knowledge of it.

Senator O'MAHONEY. Do you think there ought to be some public control of the instrumentalities of commerce?

Mr. ALLEN. Not until we have got a somewhat better and broader basis for it than we have at the present time. I do not want you to think I am dodging that question by saying, as people who do not want any legislation are inclined to say, that you should put it off.

Senator O'MAHONEY. There are two kinds of control or regulation. One we have had ever since the Sherman antitrust law was passed. That is to invest boards or commissions with more and more power to say what business can or cannot do. That proposal is now being made in some very respectable quarters, that there ought to be a new bureau of perhaps industrial economists who should be clothed with power to say to businessmen A, B, C, and D: "You may engage your corporation in business in this form, and under these prohibitions, and charge these prices"; while to corporations X, Y, and Z the same group should be empowered to say "No." Would you favor anything of that kind?

Mr. ALLEN. Well, I have thought something of that kind might have its advantages. There were certain kinds of business in our part of the country having a hard time when Mr. Hoover was President, and they felt if they could limit production a little bit and do away with some of the obstructive machinery in the industry, it would be a very fine thing and would stabilize prices and nobody would be hurt.

Senator O'MAHONEY. Would not that be Government control or regimentation?

Mr. ALLEN. Not if they could have done it among themselves.

Senator O'MAHONEY. They would have to get authority to do it.

Mr. ALLEN. When some of these men wanted to do this the Attorney General said: "I think what you are trying to do is fine, but I cannot agree I will not prosecute you tomorrow if you do it." The plan fell through. The N. R. A. came along, and I think it worked out very well, as far as that industry was concerned, but not with regard to a lot of others. That particular industry was so bad off that everybody was scared to death. I remember talking to two gentlemen on the train coming to Washington to discuss the codes with General Johnson. They said they hoped it would work, but if it did not they would have to quit.

Senator O'MAHONEY. It is quite obvious to me that you have given a great deal of study to this subject and have quite completely and frankly expressed your opinion with respect to it. I am sure the committee would appreciate it, after you return home, if you should feel inclined to write us a letter and tell us what you think should be done.

(Here followed a discussion off the record, at the conclusion of which the subcommittee adjourned until Tuesday, March 15, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

TUESDAY, MARCH 15, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to adjournment, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman) presiding.

Present: Senators O'Mahoney (chairman), Borah, Logan, and Austin.

STATEMENT OF JOHN HARRINGTON, REPRESENTING THE ILLINOIS MANUFACTURERS ASSOCIATION

Senator O'MAHONEY. Please give your name and whom you represent.

Mr. HARRINGTON. My name is John Harrington. I am an attorney at law, a member of the firm of Fyffe & Clarke, Chicago, Ill., general counsel of the Illinois Manufacturers' Association. I am appearing here in behalf of the Illinois Manufacturers' Association.

The Illinois Manufacturers' Association is composed of approximately 2,700 persons, firms, and corporations engaged in manufacturing or allied pursuits in the State of Illinois.

Senator O'MAHONEY. Are these members individuals? Or are they corporations?

Mr. HARRINGTON. They are both, but the great majority are corporations, which would be directly affected by this bill if enacted. They would either have to be licensed or would live under the constant threat, if they engaged in interstate commerce, of a complaint being filed against them under section 7. And, in view of the comprehensive language of section 7, this threat cannot be disregarded. The association contains large and small members, large manufacturing companies and small manufacturing companies, and they all pay the same dues. The board of directors consists of a pretty good cross section of large and small industry.

Our opposition to this bill is not directed to any particular provision but to the scheme of the bill itself. Illinois industry is frightened by this bill, not because it is directed at monopolies or at particular specified corporate and employment policies, but because of the bureaucratic regulation of all business which it imposes. I do not use the term "bureaucratic" in criticism of any individuals connected with the Federal Trade Commission or any other Government commission, bureau, or agency. I refer to the system itself.

Senator O'MAHONEY. I hope you do not use it as a criticism of any member of the committee.

Mr. HARRINGTON. Oh, no.

For this reason, the particular acts and practices prohibited are more details. If sections 4 and 5 of the bill were to be completely rewritten and an entirely new and different set of conditions of license imposed, the opposition of Illinois industry to the bill would remain.

We object strenuously to such vast control over the right to engage in business being placed in the hands of any governmental agency. This fear is not based solely on the effect of so-called political influence. It is deeper and broader than that. Even if political influences could be eradicated, which is almost a Utopian conception, our objections would remain.

We look first at section 1, the Findings of Fact and Declarations of Policy. Although this section does not contain any regulatory provisions, and assuming, as has been frequently stated, that the bill would be complete without it, it is there, a guide to future Congresses, and a guide to the Federal Trade Commission in its enforcement.

Senator O'MAHONEY. Is there anything in that declaration of policy that is not in the Constitution of the United States or the decisions of the courts?

Mr. HARRINGTON. I think there is.

Senator O'MAHONEY. I wish you would point it out.

Mr. HARRINGTON. I think in my further analysis I do that.

Senator O'MAHONEY. Very well. Proceed with your statement.

Mr. HARRINGTON. This section commences with a statement which is in effect an indictment against corporations charging—

1. That in many industries they carry on commerce "to a dominating extent."

2. That frequently "Their capital is furnished by citizens and residents of many States other than the State from which their corporate existence is derived."

Senator O'MAHONEY. That is true, is it not?

Mr. HARRINGTON. It is, to a certain extent; yes.

Senator O'MAHONEY. Is it not completely true? How can you interpret that as being an attack upon anybody or any system?

Mr. HARRINGTON. That in itself is not, but that taken with the declaration of policy that follows is an attack. That is just one of the things which, standing alone, is true, but when taken in connection with the declaration of policy is what we think is a great danger, particularly the power to be placed in the hands of any administrative board in enforcing a bill of this nature.

That "A constantly increasing proportion of the national wealth has been falling under the control of a constantly decreasing number of corporations."

4. That the growth of such corporations and such concentration of wealth in corporate hands has effectively impaired the economic bargaining power of labor employed by such corporations.

5. That "many of the causes of such maladjustment of wealth have been and are national in their scope and effect."

The declaration of policy then follows:

1. For "the purpose of executing and exercising the power granted to the Congress of the United States in the commerce clause of the Constitution",

2. For "the purpose of preventing the channels, facilities, and corporate instrumentalities of interstate commerce from being utilized to promote unfair or monopolistic methods of competition";

3. For "the purpose of protecting, fostering, and increasing such commerce to the end that the capacity of the people to purchase commodities sold, exchanged, transported, or delivered in the course thereof may be increased with consequent reduction of unemployment and correction of the maldistribution and concentration of economic wealth and power";

"It has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce."

So this bill must be taken to be a bill to enable the Federal Government, through its administration agencies or bureaus: "To regulate the terms and conditions on which corporations may produce and distribute commodities."

To so regulate "the terms and conditions on which corporations may produce and distribute commodities"—to what end?

To the end that the purchasing power of the people shall be increased, unemployment decreased, and "maldistribution and concentration of economic wealth and power" corrected.

Senator O'MAHONEY. Let me interrupt you to say what I have said to several witnesses before, that you misconceive the entire tenor and purpose of this bill. It is not the intention of the sponsors of the measure to give the Federal Trade Commission or any Federal bureaucracy the power to set the terms and conditions on which corporations may operate. The intention of the sponsors of this bill is that Congress shall set the terms and conditions. If this language is not sufficient for that purpose, of course, it can be changed. If we are to have a rational view of this proposition, we must know what the tenor and purpose of the bill are intended to be.

It is that the Federal Government has the right to define the powers and the responsibilities of the corporations which are engaged in the field of commerce over which the Federal Government has exclusive jurisdiction. The purpose of the bill is not to give the Federal Trade Commission or any other Federal agency the power to say what business shall or shall not do, what corporations shall or shall not do; but merely to clothe the Federal Trade Commission with the power to administer the terms and conditions which are laid down by Congress.

This all arises in our conception that, since a corporation has only those powers which are given to it by government, the Government which has jurisdiction over the national commerce problem is the one which should name those terms and conditions, and it should be done through a law of Congress and not through any bureaucratic agency.

Senator AUSTIN. Then you would have to eliminate section 15, would you not?

Senator O'MAHONEY. I think you and I could discuss that and probably come to a conclusion whether we should or should not. I don't think so, because the rules and regulations set forth there are intended to be merely ministerial rules and regulations. The circumstances are exactly the same as those which were discussed in the Senate yesterday with respect to the power of the proposed civil service administrator to effect rules and regulations. As you will remember, the chairman of the committee argued the power was merely the power to prescribe the rules and regulations within the general provisions, but that the substantial rules still had to be made and approved by the President.

Senator AUSTIN. I understood the claim to be made that the language there was merely the enactment of rules for certain administrative acts, and had nothing to do with the rules to carry out the purposes of the act. That is what I find in this act that seems to me to be a delegation of power, because it says: "as may be necessary to carry out the purposes of this act."

Senator O'MAHONEY. It says: "The Commission is authorized to prescribe, amend, and modify such rules and regulations, not inconsistent with the provisions of this act, as may be necessary to carry out the purposes of this act."

The purpose of that was to limit the power to make regulations, and if this language does not satisfactorily limit it, a change can very easily be made to prescribe that limitation.

Mr. HARRINGTON. We feel that it carries that implication. In the very nature of the operation of administrative tribunals or administrative boards, there is vested certain discretionary power in that tribunal. As a practical matter, if they are to function at all, they must necessarily exercise some discretion.

We feel that the preamble or section 1 has great significance in that respect.

What section 1 of this bill says is that it is for the purpose of enabling the Federal Government to control the production and distribution of commodities by corporations, so as to bring about a redistribution of economic wealth and power in this country.

That is what it says to every businessman and property owner, large or small, who reads it.

To what extent is economic wealth and power maldistributed? To what extent is it over-concentrated?

To what extent is it to be redistributed? To what extent is it to be unconcentrated? Who is to determine how much is too much?

The bill in its declaration of policy proposes a major operation upon the productive and distributive machinery of the Nation. The regulation of the production and distribution of commodities is placed in the hands of a Government agency to bring about redistribution of economic wealth and power.

Senator O'MAHONEY. May I interrupt you again? I am sorry to do this. But does not the word "redistribution" involve taking something away from one group and passing it over to another?

Mr. HARRINGTON. I do not see how maldistribution can be remedied with redistribution. If maldistribution of wealth is to be corrected, that would necessarily imply redistribution.

Senator O'MAHONEY. Oh, no; not at all.

Mr. HARRINGTON. It does to us.

Senator O'MAHONEY. I think you want it.

Mr. HARRINGTON. No; we do not. We think that is what it would mean to the administrative body that would administer the act.

The instruments for performing the operation are set forth in the remaining sections of the act. But it is realized that they may not be sufficient.

Section 5 (k) provides that every license shall contain the condition that the licensee shall be subject to, comply with, and accept any requirement that may be imposed by the Congress as a condition of its right to engage in commerce. And section 3 (e) provides that any

corporation, subject to the act, shall have power by mere act of its board of directors to accept any charter restriction that Congress imposes.

If this bill is passed, the operation starts. Now the questions we have asked will be answered, and what new instruments will be adopted are matters of conjecture and of fear.

Thousands of businessmen in Illinois are now asking these questions, and in the absence of answers are growing more and more fearful of the future of business and industry in this country.

Yes; business and industry are paralyzed with fear, and if section 1 of this bill is to be taken seriously, they are highly justified in their fears.

And it will be taken seriously by the administrative agency, the Federal Trade Commission.

Senator AUSTIN. May I interrupt you there?

Mr. HARRINGTON. Yes.

Senator AUSTIN. Suppose that a license is obtained on the terms laid down here, and then suppose that afterward the Congress enacts a law which is regarded by the licensee as a deprivation of his constitutional rights. Suppose the licensee makes an attack in the courts upon that law. Is it not the legal effect of section (k) that his license is automatically terminated and he is an outlaw, so far as interstate commerce is concerned?

Mr. HARRINGTON. I think that by accepting the license he has waived the right to question the validity of any future imposition.

Senator BORAH. I would like for you to point out the provision in the bill that says that.

Senator AUSTIN. Page 13.

Mr. HARRINGTON (reading):

That the licensee shall be subject to, comply with, and accept any requirement that may be imposed by the Congress as a condition of its right to engage in commerce.

Senator O'MAHONEY. Why did you skip "not inconsistent with the laws of the United States"?

Mr. HARRINGTON. Because that relates to the State and not the Federal Congress. It is a State and not a congressional requirement. I can read it all.

Senator O'MAHONEY. I think it is really important not to leave out that specific phrase.

Mr. HARRINGTON (reading):

That the licensee shall be subject to, comply with, and accept any requirements not inconsistent with the laws of the United States that may be made by the State of its incorporation, and any requirement that may be imposed by the Congress as a condition of its right to engage in commerce.

Congress would have only the right prescribed by the Constitutional provision.

Senator O'MAHONEY. You think it would have that right?

Mr. HARRINGTON. Yes.

Senator O'MAHONEY. I think there is no doubt about that. Congress cannot overrule the Constitution of the United States.

Mr. HARRINGTON. That is one of the matters I spoke of that we think is unconstitutional.

Senator AUSTIN. Now, beginning with section 5 on page 9, it says: "Every license issued under this act shall contain, and the licensee shall be subject to, the following conditions:"

Subsection (k) is one of those conditions. If a licensee fails to accept that provision, then what? I mean with reference to his license?

Mr. HARRINGTON. If he fails to accept anything not inconsistent with the laws of the United States, he loses his license.

Senator O'MAHONEY. I think you used the right word when you began your testimony. I think you are frightened and are seeing ghosts where they do not exist.

Senator AUSTIN. Let us not slide over this without carefully reading it. Do you think this clause "not inconsistent with the laws of the United States" has anything to do with the provision following "and any requirement that may be imposed by the Congress as a condition of its right to engage in commerce"?

Mr. HARRINGTON. I think it is open to either construction. The punctuation to me indicates that it does not apply to the last clause.

Senator AUSTIN. That is what it indicates to me.

Senator O'MAHONEY. Proceed with your statement, Mr. Harrington.

Mr. HARRINGTON. It has been repeatedly asserted that the power vested in the Commission is purely ministerial; that it has no discretionary power in the administration of the bill; and that the corporations subject to the bill always, and in every instance have recourse to the courts. I do not quarrel with these assertions. They are true, on paper; but what do they mean in practice? And it is their practical operation that we are interested in. That is what businessmen want to know, not what does the Commission have a right to do, but what will it do?

The Commission has the right under section 3 to deny an application for license if the applicant fails to furnish the information called for in section 3 (b). It has the right to deny license if it finds, after notice and hearing, that the applicant is an unlawful trust or combination or "if it is a party to any contract, combination in the form of trust or otherwise, or conspiracy in restraint of commerce in violation of the antitrust laws or if it is monopolizing or attempting to monopolize, or combining or conspiring with any other person to monopolize any part of such commerce.

And what does the denial of a license mean? It means, to use a phrase current some few years ago, "economic death."

It is true that an order of the Commission denying a license is subject to judicial review, the regular form of judicial review from orders of administrative bodies, a judicial review on questions of law in which the Commission's findings on all questions of fact are conclusive if supported by evidence, unless it clearly appears they are capricious and arbitrary.

In connection with this right of judicial review, the decision of the Circuit Court of Appeals of the Fourth Circuit in the case of *Moresville Cotton Mills v. National Labor Relations Board*, affirming an order of the National Labor Relations Board is extremely interesting. The Court said:

But the testimony * * * was sufficient, if believed, to support the finding and order of the Board * * * since section 10 (2) of the act provides that the board's findings as to the facts if supported by evidence shall be conclusive.

A rather slender reed to lean on when threatened with "economic death." And more particularly so when the appeal by a rejected applicant does not operate as a stay of the Commission's order, unless specifically ordered by the Court.

In case of violation, the Commission, may, after a hearing, notify the Attorney General to start proceedings for revocation in a Federal district court. In such event a licensee suspected of violation would have one advantage over a rejected applicant. The violation would have to be proved by the weight of the evidence.

But what seems to us most important, and as evidence of the great evil of placing such power in the hands of an administrative board, is what I wish to call specifically to your attention now.

What would happen to the rejected applicant or the licensee suspected of a violation while it was thus availing itself of the safeguards provided in the bill? It would generally be known that the charges had been made against it; complaints and hearings are news and are featured in the daily press and in trade papers; they would probably be broadcast in the press releases of the Commission; its stockholders and its creditors would know that its very right to carry on business was endangered; its credit would be either crippled or destroyed; its energies would be diverted from production and selling, to defense. Even if it was eventually successful, it might be ruined before it had proved its innocence—and if a court refused a stay of an adverse order of the Commission—it might already be out of business.

A corporation engaged in supplying other manufacturers with parts would find that much worse than in selling direct to the public. Manufacturers have to know that their supplies of parts for the finished product are going to be continued. If there is any such threat that any particular supply may go out of business they are going to cut off, are going to look some place else. Then, if subsequently it is found that supply is not out of business, they usually do not change from the person they went to. We have found that frequently in labor disturbances and strikes. When such a source of business is destroyed or curtailed, it stays curtailed.

Consequently, few corporations could avail themselves of their rights. They would be compelled to make their peace—to ask "What must we do to avoid the risk and expense." And this question would not be asked of the Federal Trade Commission itself. It would be asked of some examiner or investigator for the Commission. And that examiner or investigator would, in effect, dictate the terms and conditions on which that corporation would be allowed to exist.

Senator O'MAHONEY. I cannot refrain from saying that, if there were any justification for such an interpretation, we would immediately change the language. The testimony you are now giving is based wholly upon a concept which is not entertained, so far as I know, not only by any member of the committee, but by any member of the Senate.

Mr. HARRINGTON. It is based upon our practical experience with administrative bodies.

Senator O'MAHONEY. It is all based upon your concept that this bill, whether or not it is intended to do so, does give discretionary power to administrative agencies.

Mr. HARRINGTON. Inevitably.

Senator O'MAHONEY. As I say, that would be changed immediately if there were any basis for such an interpretation.

Mr. HARRINGTON. A recent analysis of the National Labor Relations Board shows that up to February 1, 1938, 8,614 cases were disposed of. Of that number 444 cases were disposed of through the courts or hearings or orders of the board, which amounts to 1 out of 20. The other 19 were disposed of by agreement, withdrawals, or dismissals, and usually all of them result in doing what is asked, in order to avoid a complaint being filed. We cannot see how that can be avoided, when the right of a man to engage in business or the right to continue in business is placed in the hands of such an administrative body.

This bill—or any other bill, which vests in any board or commission the power to set in motion the machinery whereby a corporation can be prohibited from transacting business, vests broad discretionary powers in that commission or board as a practical matter.

Our fears in this regard are not based on mere conjectures or hysteria. They are based on what actually happens now before Government commissions and boards. And in none of the cases is the power of the board or commission, in any way, equal to that granted the Federal Trade Commission under this bill.

Any administrative body, to whom the enforcement of a measure such as this bill is entrusted, automatically has very broad discretionary powers.

And the Commission, in exercising these inevitable discretionary powers, will be guided by the declaration of policy contained in the bill—in fact, in section 13 (b) it is expressly authorized to effectuate the “declared policy” of the act.

So, in spite of the purposes of the authors and proponents of this bill, the Commission will, in fact, exercise broad discretionary powers in an attempt to redistribute the national wealth and power.

This conclusion, which is inevitable from the very nature of the bill, is further borne out by the nature of many of the licensing conditions contained in the bill.

The bill apparently broadens the scope of the antitrust acts. Under the present antitrust acts, the question of what is an illegal contract, combination, or act is difficult to determine.

The bill apparently broadens the scope of the Federal Trade Commission Act by including “dishonest or fraudulent trade practices.” Under the Federal Trade Commission Act it is by no means clear what constitutes unfair methods of competition.

The bill reiterates the provisions of the National Labor Relations Act, places in the hands of another board the power to determine what is collective bargaining.

No corporation can be sure of just what is required of it under these provisions. And the penalty of this doubt is unquestioning compliance with the dictates of the commission or costly litigation, accompanied by possible destruction.

The other conditions required of licensees, and most of the mass of information required of applicants for licenses, all relate to corporate practices. Furnishing the information would be extremely burdensome upon all applicants, and when furnished it would either be too voluminous to be of any value or would result in endless checking and investigation—with the right to a licensee hanging in the balance while this checking and investigation took place.

The conditions relating to corporate practices all relate to practices which have no doubt been abused. Their inclusion in a bill of this nature, covering all corporations having gross assets of \$100,000 or more, with the provision that all other corporations competing with them may be brought under it, can be compared with fingerprinting the entire population to catch a band of criminals.

The Illinois Manufacturers' Association believes that the passage of this bill would increase the present fear and uncertainty of business. The remedy is worse than the disease.

I want to thank the committee for allowing me to appear before it. Senator AUSTIN. I want to ask one question. We discussed the relationship of section 15, relating to rules, and section 1, defining the purposes of the bill, and it was plain that section 15 relates only to rules touching the administrative functions of the Federal Trade Commission under the act, and that it does not relate to rules affecting the purposes of the act. When you look at section 13 (b), we find expressly given to the Commission authority to prescribe rules and regulations concerning the matters to which this act relates, do we not?

Mr. HARRINGTON. Yes.

Senator AUSTIN. In your mind, is there any possible chance of escaping the conclusion that by this bill, if it should become a law, the Commission is vested with legislative authority in that regard?

Mr. HARRINGTON. I think that, taking the provisions of section 13 (b) into consideration, it is.

Senator BORAH. Mr. Harrington, I take it that the logic of your position is that there should be no regulation of corporations engaged in interstate commerce at all.

Mr. HARRINGTON. There should be no regulations of this nature. I am not arguing for the repeal of the antitrust laws or the Federal Trade Commission Act, but I am arguing against regulations which prescribe life or death being placed in the hands of an administrative board to administer.

Senator BORAH. You are not in favor, then, of any additional regulation to what we now have?

Mr. HARRINGTON. Not to this legislation. I cannot say whether I would be in favor of any additional regulations or not, in the abstract.

Senator BORAH. Do you recognize the existence of monopolies?

Mr. HARRINGTON. I know that there probably are. I have had no personal experience.

Senator BORAH. Do you go no further than to say that you think there are?

Mr. HARRINGTON. That is as far as I go.

Senator BORAH. You do not know that there are monopolies in existence?

Mr. HARRINGTON. No.

Senator BORAH. And your organization has never found it necessary to study the question of how to deal with monopolies?

Mr. HARRINGTON. No; not at all.

Senator BORAH. Do you have any suggestion to make along the line of how to deal with monopolies?

Mr. HARRINGTON. Nothing other than is stated in the present law.

Senator BORAH. Do you believe in Federal incorporation?

Mr. HARRINGTON. I do not know whether I would or not. I do not believe in Federal incorporation coupled with the administrative

features that are included in the licensing under this bill. If there were Federal incorporations something in the nature of State incorporations, I would not object to it.

Senator BORAH. You recognize, do you not, the necessity, if you are going to regulate interstate commerce, of regulating the instrumentalities by which interstate commerce is carried on?

Mr. HARRINGTON. I think that is done to a considerable extent at the present time.

Senator BORAH. In what respect?

Mr. HARRINGTON. By prohibiting various acts and providing penalties for their violation.

Senator BORAH. Do you have reference to the antitrust laws?

Mr. HARRINGTON. I have reference to the antitrust law, the Federal Trade Commission Act, the National Labor Relations Act.

Senator BORAH. Is your organization in favor of the antitrust law? Do you think it ought to be enforced?

Mr. HARRINGTON. I think our organization is in favor of the enforcement of any law.

Senator BORAH. I am asking you if you believe it is a good law, a desirable law, and ought to be enforced.

Mr. HARRINGTON. Yes; I think I will say I do, personally, and I believe that is the attitude of our association.

Senator BORAH. And do you think it ought to be in existence? I ask these questions because I have received a letter from an Illinois manufacturer—I do not know whether he is a member of your organization or not—telling me about the trouble he is having with a couple of monopolies, and that they are driving him out of business. He is a businessman. Do you not think a man who is fighting against great concentration of wealth ought to have some protection against it on the part of his government?

Mr. HARRINGTON. If the concentration is illegal.

Senator BORAH. It may be so great as to be effective without being technically illegal, may it not, under the present law?

Mr. HARRINGTON. Yes; I would say that it could.

Senator BORAH. I would like to ask your organization, since it protests against this bill in its entirety, its philosophy and its whole theory, to present to this committee what its views may be with reference to the regulation of monopolies and trusts, and send it here so we may have it in the record.

Mr. HARRINGTON. I will do that.

Senator LOGAN. I was just wondering if someone like Senator Borah, who has been in the Senate for 30 years or more, knows of any bill that has ever been introduced in Congress for the purpose of, preventing trusts and monopolies or conspiracies in restraint of trade that has not been fought very vigorously by business, and particularly large business concerns?

Senator BORAH. I do not recall any. The fight seems to grow more intense in accordance with increasing effectiveness of the law.

Senator LOGAN. I join in the request of Senator Borah to Mr. Harrington that his organization, as well as other organizations, present something to Congress that may be helpful, something other than absolute opposition to any proposal to regulate business. According to my recollection, business has fought the antitrust laws, has fought the interstate commerce law, fought the child labor amendment, and I

think all other similar laws. There is nothing that tends to regulate business that has not been fought vigorously by business, although afterward it has lived under it and approved it and said it was a good thing.

Senator O'MAHONEY. I understood you to say in response to Senator Borah, Mr. Harrington, that you would have no objection to a Federal law in the nature of the State incorporation laws. Did I understand you correctly?

Mr. HARRINGTON. I do not know what such a Federal incorporation law would provide, but I do not think there should be any that is any different from the kind we have in the States. I am only able to visualize the kind of Federal incorporation which contains the licensing provisions of this bill, and I certainly would not and our organization would not favor such a bill.

Senator O'MAHONEY. You recognize the fact, of course, do you not that the corporation laws of the various States vary tremendously in the powers that they grant to corporations organized under them?

Mr. HARRINGTON. Yes.

Senator O'MAHONEY. That some States allow practically unlimited authority, and others impose certain restrictions upon the activities of corporations. Is that right?

Mr. HARRINGTON. They vary greatly, and some are much more liberal than others.

Senator O'MAHONEY. Do you think that the States should be permitted to allow incorporators, as it were, to write their own tickets in creating corporations to engage in interstate and foreign commerce?

Mr. HARRINGTON. I think that no State has ever allowed incorporators to draw up their own incorporation, unless in accord with the provisions of the laws of that State.

Senator O'MAHONEY. That goes without saying. No incorporators may get a charter except in compliance with the terms of the general law. That is the usual rule now. I am asking you whether, in your opinion, any State should be permitted to give carte blanche to any incorporators who may wish to incorporate and engage in interstate and foreign commerce?

Mr. HARRINGTON. I do not think that is the effect of a corporation charter.

Senator O'MAHONEY. You are not answering my question. Assume, for the sake of the question, that it is the effect, and then I will let you show why it is not.

Mr. HARRINGTON. I think they should have the right to form corporations.

Senator O'MAHONEY. That again is not my question. I am asking you whether, in your opinion, any State should be permitted to give carte blanche to any individuals or concerns to engage as a corporation in interstate and foreign commerce.

Mr. HARRINGTON. The State has the right to create the corporation.

Senator O'MAHONEY. Has it the right to regulate interstate and foreign commerce?

Mr. HARRINGTON. No.

Senator O'MAHONEY. Has it right to create, without limitation or restriction, the instrumentalities that carry on interstate and foreign commerce?

Mr. HARRINGTON. Yes; it has the right.

Senator O'MAHONEY. I thought that would have to be your answer, after the testimony which you have given here. What you are telling us and telling the country, in behalf of the Illinois Manufacturer's Association, is that the Federal Government, which is given the exclusive power by the Constitution of the United States to regulate interstate and foreign commerce, should not be permitted to regulate the nature of the instrumentalities that carry it on. The inevitable conclusion of your position is that the power of the Federal Government under the Constitution to regulate interstate commerce may be rendered absolutely nugatory by the State laws.

Mr. HARRINGTON. No. I say our position is that the Federal Government should not, by a bill requiring licensing of corporations, and placing the power to administer that license in the hands of a board, thereby possibly preventing it from continuing in interstate commerce, be able to put a corporation engaged in interstate commerce out of business.

Senator LOGAN. Do you believe that Congress has the power to regulate commerce among the States?

Mr. HARRINGTON. Yes; the Constitution gives it that power.

Senator LOGAN. That power is absolute and exclusive, is it not?

Mr. HARRINGTON. Yes.

Senator LOGAN. Then, if that be true, may Congress not make the rules by which interstate commerce is regulated, in the form of law?

Mr. HARRINGTON. Yes; it has that power.

Senator LOGAN. Then, if Congress has the absolute power to make the rules for regulating commerce among the States, why cannot Congress set up such instrumentalities as it may choose to act between the persons engaged in interstate commerce and the public at large?

Mr. HARRINGTON. You are still asking, can it?

Senator LOGAN. Yes.

Mr. HARRINGTON. Yes.

Senator LOGAN. If it can do that, may it not prescribe that corporations engaged in interstate commerce must comply with certain rules which Congress has prescribed for the regulation of interstate commerce?

Mr. HARRINGTON. That would, in my opinion, depend on whether the rules would attempt to regulate interstate commerce or attempt to regulate matters not in interstate commerce. I do not know where the line would be.

Senator LOGAN. This bill has nothing to do with any corporations except those engaged in interstate commerce. Someone must determine what is interstate commerce. Does the corporation have that power?

Mr. HARRINGTON. No.

Senator LOGAN. Who does have the power to determine what is interstate commerce?

Mr. HARRINGTON. The courts, eventually.

Senator LOGAN. Ultimately; yes. Then, if there is a disagreement between the agencies of the Government and a corporation as to what is interstate commerce, the only place where the question can be determined is in the courts?

Mr. HARRINGTON. Yes.

Senator LOGAN. That being true, then there could be no objection to taking a person into the courts where there is a disagreement be-

tween the Government and this person as to what is interstate commerce. Is there any other way to determine it under our form of Government?

Mr. HARRINGTON. No.

Senator LOGAN. Then, if this bill should provide regulations which are in violation of the Constitution, that can only be determined, if there is a difference between Congress and the corporations, by the court. That is true, is it not?

Mr. HARRINGTON. Yes.

Senator LOGAN. If I correctly understood your testimony, you said that Congress ought not to exercise that power, because it might make a mistake and some corporation might be wronged. Is that not true of every citizen of the United States? May his rights not be interfered with by taking him to court to have a question determined?

Mr. HARRINGTON. That is true; but the very nature of administrative boards, when their findings of fact are not overturned when supported by evidence, and not by the weight of the evidence, which is an innovation from the common law, makes it a very dangerous power. And the effect of losing such a suit is not the mere imposing of a fine or imprisonment, but extinction. We think the penalty is entirely too drastic, and that you should not impose such a severe regulation upon industry.

Senator LOGAN. You believe, do you not, that in our jurisdiction and jurisprudence a party may almost immediately secure an injunction to prevent great and irreparable damage being done him by the actions of an administrative board or officer?

Mr. HARRINGTON. I think that within the last few weeks it has been held that the National Labor Relations Board cannot be enjoined, because the Act itself provides an adequate remedy. I do not think the remedy of injunction would be of any service at all. I do not believe it would be sustained.

Senator LOGAN. Your complaint against this bill is that the findings of fact are conclusive, although made by an administrative board?

Mr. HARRINGTON. When supported by evidence.

Senator LOGAN. You think it should be supported by the weight of the evidence?

Mr. HARRINGTON. It certainly should, when a person is being put out of business.

Senator LOGAN. Do you not know that in almost all compensation laws the findings of fact, if there is any evidence to support the conclusion, are binding on the courts?

Mr. HARRINGTON. I do not know. I am not familiar with that.

Senator LOGAN. And in respect to commissions that regulate utilities there are certain general rules that the findings of fact may not be overturned if supported by any evidence.

Mr. HARRINGTON. Yes. That is an almost universal feature of so-called administrative law. It is an element that rises in appeals from decisions.

Senator LOGAN. Is it not also true that in nearly all the courts where questions are determined by juries, if there is any evidence to support the verdict of the jury the appellate court will not reverse the lower court?

Mr. HARRINGTON. I do not understand that to be the rule.

Senator LOGAN. There is some disagreement about it. I think that is true. except where the finding is so palpably against the weight of the evidence that at first blush it creates the impression in the court that there was something wrong with the jury. You do not think the court has the right to substitute its judgment as to whether or not the evidence is sufficient, do you?

Mr. HARRINGTON. No.

Senator LOGAN. Then if the verdict of a jury is not subject to review, if supported by any evidence, why in the case of a corporation should the finding of an administrative board, which is in the nature of a jury, if there is any evidence to support it, be subject to review by the court.

Mr. HARRINGTON. Because, in the first place, an administrative board is the prosecutor, it is the judge, and it is the jury. One arm is the prosecutor, and the other arm is the judge. And another reason is the penalty. I think it is bad enough when you have the ordinary penalty, but where it is being put out of business I think it is entirely too drastic.

Senator LOGAN. Let us go back to the ordinary, everyday citizen, who is asking to have his rights determined by the court. The court is an officer of the Commonwealth or the Federal Government, as the case may be.

Mr. HARRINGTON. Yes.

Senator LOGAN. The judges are elected or appointed, and paid by the Government.

Mr. HARRINGTON. Yes.

Senator LOGAN. In a criminal case the prosecutor is an officer of the State or Federal Government and is paid by that Government.

Mr. HARRINGTON. Yes.

Senator LOGAN. And the jury which hears the case and determines the question is made up of men who are officers of the State and who are paid by the State or the Federal Government?

Mr. HARRINGTON. Yes.

Senator LOGAN. Do you not think the same rule should apply to corporations engaged in interstate commerce?

Mr. HARRINGTON. I think not. There is a difference between the findings of a board and commission and the findings of a jury. As a practical matter, the various officers of the board or commission are closer to the Government than juries are to prosecutors and judges. The fact that a jury is paid by the State certainly does not make the members of the jury any less honest or efficient than a trial examiner for the trade commission or the labor board.

Senator LOGAN. Unless we assume that the members of the Federal Trade Commission are less honest than jurors, I do not see why they should be placed in a different class. They are simply acting as disinterested appointees, supposed to be well qualified to determine facts. That is the purpose of a jury. Unless they are less well qualified and honest than a jury, I hardly see why you should make the charge, because their salaries are paid by the Federal Government, that they would be against the other party.

Mr. HARRINGTON. I do not want to be understood as criticising the members of any board or commission.

Senator LOGAN. I understand that, Mr. Harrington.

Mr. Chairman, I have overstayed my time. I have another engagement, and must leave.

Senator AUSTIN. You have undertaken to send to this committee constructive suggestions with reference to the regulation of interstate commerce; that is, with a view to improvement of the conditions with respect to monopolies and combinations in restraint of trade. I want to ask you if you do not think it is worth while for your organization to consider a restatement of the existing law; for example, a restatement that will define monopolies. There is no definition of monopoly in the law today. Also a restatement that will set forth the ingredients, the essentials, of the crimes created by the antitrust law. I mean to include in the antitrust laws the Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, the Miller-Tydings Act, and all these laws regulating interstate commerce; to state the definition of crime and, for example, set forth the affirmative side of the antitrust policy of the Government of the United States, something which does not exist in any law we have today, with a view of announcing to business in this particular depression that there is a fair deal for business on the part of the Government of the United States, a deal in which what you may lawfully do appears as clearly as what you may not lawfully do. I ask you whether it would not be worth while for your organization to send us something containing suggestions along these lines. I do not mean to set out a form, or even to indicate the substance, but I join my fellow members on this committee in the belief that business can serve the United States at this particular juncture in a very useful way, and so I ask you if you do not think it is worth while for your organization to make some suggestions along those lines.

Mr. HARRINGTON. It is a very comprehensive program that you have outlined.

Senator AUSTIN. That leads me to another question. Do you not think, that in order to do such a big undertaking wisely, there ought to be a commission created to make a special study of that subject and do it deliberately, taking time enough, and in the meantime have a moratorium of trust-busting and attacks on business?

Mr. HARRINGTON. Yes, I think so.

Senator O'MAHONEY. Do you want to still retain the two elements in the last phrase you stated? Do you want a moratorium on trust-busting? I do not think you do.

Senator AUSTIN. No, I am not particularly interested in that, but I am interested in the avoidance of the things that cause fear, especially at this time.

Senator O'MAHONEY. Mr. Harrington, I would appreciate it if you would tell the members of your organization that there is no disposition on the part of any member of this committee to injure business. We are trying to help business. We appreciate the fact that something must be done, and it can only be done by the Federal Government. We certainly appreciate your cooperation.

STATEMENT OF A. P. HAAKE, MANAGING DIRECTOR, NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS, CHICAGO, ILL.

Senator O'MAHONEY. Please state your name and business to the reporter.

Mr. HAAKE. My name is A. P. Haake. I am managing director of the National Association of Furniture Manufacturers, with headquarters in Chicago.

Senator O'MAHONEY. I observe that is a national association?

Mr. HAAKE. That is a national association which extends from New England to California, but does not include the Southeast, particularly North Carolina and Virginia where there is what is known as the Southern Association of Furniture Manufacturers.

Senator O'MAHONEY. I laid emphasis upon the word "national," because we are engaged in a national program.

Mr. HAAKE. Yes.

Senator O'MAHONEY. You may proceed with your statement.

Mr. HAAKE. If you do not mind, I would like to make pretty clear the point of view from which I speak. In the first place, I am not a lawyer. In the second place, while I am employed by the furniture industry and get my salary out of dues, I still nevertheless maintain a somewhat detached attitude. If it may not be interpreted as an oversupply of ego, I look upon myself more as one who is endeavoring to be a guide to the industry, having no funds invested in it myself. And having no fear of what consequences might follow anything I say or do, I find myself in the position of saying to the industry those things which I believe to be in its best interest.

We have a board of directors which lays down the policies of the association. That board is open to suggestions from its employees. Therefore, I suppose I could be said to have come here as a disinterested party, perhaps more so than one actively engaged in the business. And in the second place, I am an economist. At one time I taught economics in the university, before I got into business and then really found out what economics is all about.

Senator O'MAHONEY. What university?

Mr. HAAKE. The University of Wisconsin, where I was head of the department. Since 1923 I have been engaged in active business.

Senator O'MAHONEY. You imply that one gets a very different view of the science of economics after engaging actively in business.

Mr. HAAKE. Yes. If I were the president of a university I would fire every member of the department of economics and make him work for at least 2 years, and then let him come back and turn him loose on the kids. I say that seriously. One president I know agrees with that view.

Senator O'MAHONEY. I think there is something in it.

Mr. HAAKE. I am afraid so. Some economists speak very profoundly who have never had to meet a pay roll. There is much that he cannot understand until he sits alongside the desk with a man who is trying to meet pay rolls month by month.

So I am looking at this legislation not as an attorney. I am looking at it rather as an economist, particularly one who knows how businessmen react to legislation. So this may or may not be a good measure, legally. I frankly do not know. I am opposed to monopoly, but if

I must choose between monopolies, I should prefer those monopolies which build up the highest standards of living to a monopoly on the part of the Government. If, as is sometimes theoretically held, monopoly by government results in the increase of the welfare of the citizens of this country, then I should be for it, on the whole.

Senator O'MAHONEY. Will you permit an interruption?

Mr. HAAKE. Certainly.

Senator O'MAHONEY. I think I should like to explain my point of view. I quite agree with you that a Government monopoly would be unwise. I think you will agree with me that a private monopoly is even more unwise; certainly just as unwise.

Mr. HAAKE. Will you permit an interpolation here?

Senator O'MAHONEY. Yes.

Mr. HAAKE. Whether or not it is unwise I do not think should be stated beforehand. It may or may not be, according to how it works out.

Senator O'MAHONEY. As between a Government monopoly on the one hand and a private monopoly on the other, there may undoubtedly be a strong preference.

Mr. HAAKE. Yes.

Senator O'MAHONEY. My concept of this problem is simply this: That to avoid these two extremes it is absolutely necessary that we create the instrumentalities by which commerce is carried on and by properly defining their powers and duties, to avoid the two horns of the dilemma. In other words, by properly regulating the nature of the corporation we may have at once rendered private monopoly impossible and Government monopoly unnecessary.

Mr. HAAKE. I agree thoroughly with your objective. Will you pardon me if I suggest to you a very unhappy omission on the part of many people, even in Congress, and certainly on the part of many people generally, which is that they fail to distinguish between objectives and methods. You can take a group of people, even in Congress, and if you draw a sufficiently vivid picture or objective, they are prone to be swept off their feet and take it for granted that the method must be right because the objectives are so splendid. My quarrel is not with the objectives at all. I am only questioning whether this is the proper method to use.

Senator O'MAHONEY. You heard the request we made of the previous witness?

Mr. HAAKE. Yes.

Senator O'MAHONEY. With respect to suggesting a method of dealing with the problem.

Mr. HAAKE. Yes.

Senator O'MAHONEY. The real purpose of these hearings is to find out how far we should go.

Mr. HAAKE. I hope with you, and I may say I am pointed in that direction. I am puzzled to know what monopoly is. It has not been defined. It is neither liberal nor conservative. To a conservative a liberal is someone he does not like, and vice versa. Monopoly, as used by most people, means something undesirable, by which a man has power he should not have, and I do not know what we are talking about when we say "monopoly."

Senator AUSTIN. Will you permit an interjection?

Mr. HAAKE. Yes.

Senator AUSTIN. I do not know whether you are familiar with Noah Webster's definition of a Federalist as one who loves the Constitution.

Mr. HAAKE. There is a subtle irony in that.

I do not know whether monopoly is necessarily bad or not, because I do not know what the things are we are talking about. If we are thinking in terms of the one who has absolute power to control the amount of food that we may eat, the amount of clothing that we may wear, who may restrict our activities in any direction in which he can use his power, I could understand that. I would not like it. On the other hand, if we are thinking of monopoly as an aggregation of capital which makes possible mass production and very greatly reduces the cost of goods, or the person who uses that capital for mass production for the most economic production of goods, and is still subject to the control of the consumer, I am frankly not afraid of it.

I am not afraid of Henry Ford. I am grateful that I can have in my garage two cars he made of such splendid value. I probably would not have them if Henry had not got enough money together to make them so cheap. He does not control the automobile market. Walter Chrysler and others have something to say about it. As long as he continues to give us more for our money, or make us think he is giving us more for our money, he can stay in business. If he stops giving us that, he goes out of business. That is true even of Henry Ford. Edsel convinced him that he ought to change the design of the car and stop making the Model T. If that is what you call monopoly, I do not think it necessarily bad. We have in our industry two or three large manufacturers. They are pikers in comparison with the automobile industry. If one of them gets a million dollars he is a big fellow. Most of them run around \$300,000 a year. One of them at one time ran up to \$18,000,000. There was in the industry a good deal of antagonism toward him. It was charged that he controlled the association; that my work was controlled by him; that he would dictate the prices of upholstered furniture, and that he did a lot of other things, all of which was sheer nonsense. He could not do anything of the sort. Yet you could have found 50 manufacturers in our industry, if you had asked them if there was monopoly in the furniture industry, who would have said yes. They might have pointed to this man, just because he demonstrated the effectiveness of his competition.

The unhappy thing that monopoly does is to force others to be efficient. People do not like to have to think and change their methods. When this fellow with a big aggregation of capital and brains demonstrated that he was more efficient than the other fellow, then we heard the cry of "monopoly." I am afraid that a good deal of the resentment we find in business against monopoly is nothing more or less than resentment against efficient competition. I should like very much to know just exactly what we are talking about when we talk about monopoly.

I have in mind a degree of monopoly by which a monopolist can do things that make the game unfair. That is a crude sort of definition. That is what I do not like. I do not like placing in the hands of a Federal or any other commission, even though I were on that commission, and I have a lot of confidence in myself, such power as this bill proposes. I think a good deal of that confidence I have gained in the furniture industry. If you were to ask me the worst thing that

could be done for the furniture industry, I would say give me complete control of it. I would be opposed to placing in the hands of a group of 3, or 5, or 7 men the degree of power this bill places in the hands of the Federal Trade Commission. They are honest men, to be sure; limited in their understanding, necessarily, because of certain limitations in their experience. Their point of view may be unbiased. I am not so sure about that. After all, they have to hold their jobs. They are subject to appointment and perhaps reappointment. I have never known anyone in the employment of the Government who does not temper his acts to the necessities of the situation.

Senator O'MAHONEY. You do not imply that is not done outside the Government, do you?

Mr. HAAKE. It is done outside, because that is human nature. I am not willing to imply that the Federal Trade Commission, even though made up of the finest people you could find, would be immune. I would be willing to put you and Senator Borah on the Commission, and I do not know of two men for whom I have more respect, and I would not trust you. I would not trust anybody.

Senator O'MAHONEY. That is complementary to your statement that the worst thing that could happen to the furniture industry would be to put you in charge of it?

Mr. HAAKE. Quite so. That is because of the weaknesses and limitations of the human being. How in the world can a man sitting in Washington, even though he has many reports before him, intelligently and effectively draw a rule, and anticipate possible situations, for the conduct of business? I saw it under the N. R. A. I have been eating crow ever since I did it. I was one of the fellows who stood up in the Mayflower Hotel and appealed for some kind of law to control the situation. I had that dream. I thought it might be possible for a law or a government to make that lunatic fringe behave itself. N. R. A. convinced me that it could not be done.

I have seen a perfectly honest individual, operating as a so-called deputy administrator of the N. R. A., one of General Johnson's deputies, perfectly sincere and honest and with all necessary information available to him, nevertheless, he not being engaged in the business, absolutely ruined a section of our industry and threw several hundreds of people out of employment, unnecessarily. He acted honestly. He had before him all the necessary information. I have seen a number of large manufacturers operating under a code who were able, by their deft handling of the deputy administrator, write their own ticket to the disadvantage of a good many small manufacturers.

When it comes to the control of an industry through an administrative board, I am far more fearful of the little fellow who is interested than I am of the big fellow. I would not be afraid if I were thinking only of my own business. I would take chances with the rest of them, and I think I could find ways and means of protecting myself under the rules of the game. But here are thousands of these fellows who are not able to do it. I sat in the little-business men's conference a few weeks ago, and last week was with them trying to get them to cooperate in the State of Illinois. Most of them do not know what it is all about. Their own knowledge of the relationship of business to government is pitifully inadequate. They know even less about economics than do the professors of economics. When you ask them to say

what they want or need, they just do not know. When you ask them to take action to protect themselves, individually and collectively, they are simply lost. The best that any of them can do is to come to the Senate or House and they may find a sympathetic Representative or Senator who will probably get something. That is about all. Of course, if they were to join trade associations and come along with us fellows they would get some real help. We are willing to admit that. But, by and large, the little fellow is hopelessly up against it. I have yet to see a law which has been drawn for the benefit of the little fellow against monopoly which has not operated to his detriment. He suffers more than does the big fellow.

I would not be afraid of a law on wages and hours, so far as the big fellow is concerned. It is the little fellow who would get nothing whatever out of it. Under the N. R. A. all violations came from the little fellow. Not having the efficiency, not being able to produce at a low cost, the result was that he lost his business. All he could think of was to sell at lower prices. The little fellow had to use the same method that John D. Rockefeller used years ago, and that was to undersell the other fellow, give something he could not give. Any restrictions that are laid on business, in my judgment, and in the light of what experience I have had, will operate several times as hard on the little fellow as on the big fellow.

We all agree that we want higher standards of living. There is no question about that. Moses worked on a problem of that sort a good many years ago.

Senator O'MAHONEY. He had a sort of big stick, did he not?

Mr. HAAKE. He had a whale of a big stick, and used a lot of fake dramatics. It took him 40 years, by the way, to take a trip that should not have lasted 6 months.

But we all want improved standards of living. How can we get that? I am frankly amused, if you will pardon me, when I listened to some of the so-called experts who said that we must cut down the size of business; that we must increase wages without raising prices; that we must increase purchasing power, and thus increase the standard of living. It has a very effective appeal. A good many businessmen fall for it. Some of our own people say: "That is all right. Raise wages, increase purchasing power, and then will come back prosperity." Nine hundred and ninety-nine out of a thousand of the people who talk to you about that do not know what they are talking about. When we are speaking of the standard of living we are talking in terms of the amount of food we may have, not what it costs, but the amount I can get down my gullet. The same is true of clothes, shoes, and all those things. You may raise my wages double or treble, but if in doing that the prices of the things I must consume raise in the same proportion or greater, I am worse off than I was before.

In the last analysis, we have got to have more production. We do not get fair distribution. We do not get anything like the equitable distribution that we should have. You will notice that in various parts of the world today, when we secure a high quality of distribution, we find ourselves tending toward the point where we may get a absolutely fair distribution, with nothing to divide. You will have inequality of distribution unless you have lots of things to divide. The difficulty is that so many people overlook the importance of encouraging the production of goods.

The immediate effect of that is to make men afraid. When we place this tremendous power in the hands of a commission, no commission can say intelligently or effectively that a certain trade practice ought to be eliminated in the furniture industry. I do not think any commission can do that. I have been with that crowd for 10 years. I came in with a little better start than some have.

Senator O'MAHONEY. You do not imagine this bill authorizes the Federal Trade Commission to call that an unfair trade practice which is not now designated an unfair trade practice?

Mr. HAAKE. Yes; I do. If I read this correctly, the Federal Trade Commission, within the limits of the law, what appears to be the purpose of the law, may draw such regulations as may be necessary to carry out the intention of the law. Am I correct about that?

Senator O'MAHONEY. There is a difference of opinion about the interpretation. We are not talking about the Federal Trade Commission; we are talking about this bill. Senator Austin and I disagree as to the effect of that language, but we do not disagree as to its purpose. If that language gives the Federal Trade Commission the power to make rules and regulations of the character which you describe, both Senator Borah and I are very ready to change it. You are talking about something not in the mind of either of the sponsors of the bill.

Mr. HAAKE. Pardon me. I do not question that is absolutely your purpose. The thing I am afraid of is that I do not see how in the world you can give a group of men discretionary power within certain limits without inevitably dragging in the danger that might go with discretionary power.

Senator O'MAHONEY. I quite agree with you. This bill does not give the commission discretionary power.

Mr. HAAKE. I am afraid it does. I hope I am wrong. That is the way it looks to me.

Senator AUSTIN. That is the way I interpret it. The sincerity of my colleagues is well known to me, and I am confident that before this bill comes out of our committee any doubt will be removed. Is that not so?

Senator O'MAHONEY. Certainly. Upon page 10, paragraph (d) is this provision:

That upon order of the Commission, issued after notice to the licensee and opportunity for hearing, the licensee will refrain from dishonest or fraudulent trade practices, from unfair methods of competition which have been so defined in the courts of the United States or established by orders of the Commission made subject to judicial review, from violations of the antitrust laws as described in section 4 (a) of this act, and from monopolizing, or attempting to monopolize, or combining or conspiring with any other person to monopolize, any part of the commerce.

You have the Federal Trade Commission Act on the statute books. No critic of this bill comes here proposing the repeal of that law. You would not be able to find, I venture to say, a single Member of Congress who would propose a bill repealing the Clayton antitrust law.

Mr. HAAKE. I think you are right.

Senator O'MAHONEY. So that we are confronted with the fact that here is a law, here is a certain condition which is conceived to be an unfair trade practice, a monopolistic device, and the like. Do not

blame this bill for that law, and certainly do not criticize that law unless you are willing to propose that it be repealed.

Mr. HAAKE. I would not repeal the other, and I would not quarrel with this law if it did not put in the hands of this board the power to upset conditions in business. The Federal Trade Commission now has a good deal of power, and I think this gives them entirely too much.

Senator O'MAHONEY. The fact that must be recognized by every observer in this field is that the present system to which we resort of punishment after the fact, a punishment which is limited in effect by comparatively small fines, has not produced the results that were desired. For 50 years every political party in the United States has proclaimed its devotion to the antitrust laws. For 50 years every candidate for public office in the Federal field, practically without exception, has announced his intention, if elected, to do what he could to enforce the antitrust laws.

Mr. HAAKE. In the meantime, all of them have been talking about something that no one understands.

Senator O'MAHONEY. I would not agree with you on that. In the meantime, the concentration of economic power and wealth has proceeded, because of the ineffective means of enforcing these laws. The enforcement of these laws lasts no longer than the unflagging energy of the particular individual charged with that duty for a short time. The Department of Justice changes in every administration. It seldom exists as a unit for more than 8 years, from the Attorney General on down the line.

But with respect to the combinations of economic power that carry on the commerce of the United States and, in some instances the world, there is very little change. You will find the same staff working day after day, week after week, year after year, collating the information and the material with which to combat the representatives of the Government. It is an unequal task. You will find in the Department of Justice and the Federal Trade Commission men who are clothed with the responsibility of defending these laws who receive only a fraction of that which is paid by the big outfits against which the laws are sought to be enforced. These big combinations can and do retain the very best brains. The purpose of this bill is merely to limit at the beginning certain practices which nobody will defend, and to say that no corporation engaged in interstate commerce shall be permitted to practice these devices.

Senator AUSTIN. Before we leave that subject, if you will excuse me for interrupting you at this point, I would like to make an observation.

Senator O'MAHONEY. Certainly. I am always testifying too much.

Senator AUSTIN. Not at all. I just want to consider this point. I think we must remember that subsection (k) on page 13 is just as much a part of the present section 5 as is subsection (d) on page 10. My interpretation of subsection (k) is that it takes it away outside of the existing law and makes one of the conditions of the license that the licensee accept the unknown laws and unknown requirements that may be imposed by Congress, as a consideration of its right to engage in commerce. Taking that together with section 15 and section 13 (b), it seems to me the witness is right in construing this bill as giving this discretion outside the existing law.

Senator O'MAHONEY. You have to assume that the bill provides for a future law. Attention should be called to the fact that that provision is similar to the provision written into practically every State corporation law after the *Dartmouth College* case. In that case the Supreme Court of the United States ruled that the legislature of New Hampshire did not have the power to change the terms of the charter of Dartmouth College. When the Supreme Court laid down that rule the States immediately changed their corporation laws and wrote into them special provisions relating to the right of States to change the corporation charters.

Mr. HAAKE. The section to which Senator Austin just referred is particularly significant. It seems to me it broadens the aspect of the bill and practically means that the signature of the corporation must be attached to a blank check, so far as any future rules or regulations are concerned. I wish I could share your—I will not say “complacency,” but your lack of fear with respect to what the Federal Trade Commission might do. I have seen it often. It is because human beings must interpret the degree of power and just how far they shall go. I have seen them adopt rules and make rulings that were not in the best of judgment. There was one in the rayon industry, and they said it must also apply to the furniture industry. They told us to obey them without any idea of the consequences, if we tried to do it. I am not sure that any of our practices are really bad.

Senator O'MAHONEY. That implies that you think some are bad, does it not?

Mr. HAAKE. In their results; yes. For example, selling below cost. From the point of view of where I stand, that is a terrible situation. In the case of the man I was talking about a while ago, the rest of the fellows were coming to me and asking me to do something about it.

Senator O'MAHONEY. Did you have power or authority to do something about it?

Mr. HAAKE. I did not want to.

Senator O'MAHONEY. Did you have the power?

Mr. HAAKE. No.

Senator O'MAHONEY. Why did they come to you and ask you to do something about it?

Mr. HAAKE. I do not think anyone should have that power.

Senator O'MAHONEY. Why did your members ask you to do something about it, if you did not have the power?

Mr. HAAKE. For the same reason that one of my children at home comes to me, when he cannot get his lessons, and wants me to do it for him.

Senator O'MAHONEY. What power do you have as executive director of that association?

Mr. HAAKE. I have no power. I have a good deal of influence. I might call it educational influence. I say to these people who complain about selling below cost that the answer is not to bring this fellow's costs up. I am not so sure he is selling below cost. I found many cases where it developed that goods were not being sold below cost. I say to them: “If he is selling below cost, he is selling below your cost, because of his efficiency. The answer is to make yourselves efficient, and not to bring his prices up but to bring your prices down.” The effect was to bring the prices up by showing the man he was simply putting himself out of business. We do not do that any

more. I have been for several years bringing to our people improved methods of control of costs, especially people who claimed they were losing money. The net result of that is that the cry about selling below cost has almost disappeared. When a man feels bad about it now, he soon learns that it is due to his inability to compete with the others.

We had a good deal of that in the furniture business a few years ago. We are starting out now with the retailers. We very often find that a retailer could take 20 percent off his prices if we could show him how to run his business more efficiently. That is far more effective, and it is the only basis on which you can really justify its operation, because the net result is to give the public more for its money.

Senator O'MAHONEY. And you do that on a national scale?

Mr. HAAKE. Yes. It is not as effective as I would like. Some of them are as difficult to deal with as some of the people you are trying to convince, but it does work. I do not think selling below cost is a bad thing. It may be a splendid thing. It has improved conditions in our industry.

The thing that some people thought was a bad trade practice is forcing the inefficient fellow to become more efficient. We do not look on it as a bad practice any more. We had a tremendous number of provisions in the code. If we had been satisfied with one or two provisions in the code it might have lasted longer. The thing that looks like a bad practice may be an excellent practice. It is, in the last analysis, if it brings more goods to the people for a given amount of money. I know as a fact that no group of men can sit down today in any industry and say specifically and certainly that this practice is good and that practice is bad. It may look very bad at the present moment, but whether or not it actually is may be open to question.

Senator O'MAHONEY. You will not find any disagreement on my part with that statement.

Mr. HAAKE. I wondered at first what to do about it. I helped write a book once on industrial government. I thought I had done a wonderful thing. I thought as Henry George did about his book "Progress and Poverty", that if only our businessmen would read that book all their problems would be solved. I knew it then. Now, if my hat does not fit me, I read the book and it fits again.

I do not think anyone of us can sit down and draw a picture of what business should or should not do. In the last analysis, it is the consumer that writes the ticket. If the monopoly is what some people think of as a monopoly, an aggregation of power with capital that brings about mass production and gives us a \$3,000 automobile for \$500, if it does a good job for the public and creates a lot of other jobs, as many of them do, it certainly is not a bad thing. The percentage of our gainfully employed population has increased with all technological improvement.

If it becomes a bad monopoly and charges more than it should, the public will correct that. I am willing to trust it. I would rather take what unhappy consequences might come from monopoly we can control than to destroy the benefits of the whole system. It is something like the farmer who finds a rat in his flock of chickens. He gets his gun and lets both barrels go right into the flock. He may or may not hit the rat, but he kills a whale of a lot of chickens.

I am afraid this type of legislation, while its purpose is excellent, is going to do more harm than good. Most of monopolies exist more in the minds of the people than actually. Many times there is a change in the point of view of the public. We continue to talk about monopoly when we are still uncertain as to what is monopoly. We are still uncertain as to what makes monopoly, if it is bad. And we are still uncertain as to whether it is good or bad.

Having in mind the present situation, might it not be just as well to let this go for a while? There is another factor that enters into it. You can do more damage to business by continuing the uncertainty that now exists than in almost any other way you can think of. We want to increase employment, and raise the standard of living. Can we not afford to take a chance a little while longer with the system as it is? Make a pretty careful study of some of these agencies before we start regulating something which we do not yet really understand. I would even question the ability of Senator Borah, with all his years of devoted service to the country, I will say "consecrated" service—I would frankly doubt whether Senator Borah today could actually write the ticket for what is a good monopoly and what is a bad monopoly; whether he himself, perhaps the greatest authority among us, is qualified to draw up definite rules and regulations to control monopoly. I do not think there is a man in the United States I respect more than Senator Borah. I do not think any human being can do it.

I still believe that somewhere in the world there is a power that controls this whole business, and that through the forces of competition, through human beings striving with each other, the net result of all those forces is far more likely to bring about the best form of improvement than the efforts of any man or group of men who, with an inadequate understanding, imperfect judgment, presume to write a ticket for either agriculture or industry. That approaches being a religion. We have not done so badly in this country, with all the trouble that has developed over monopoly. With 7 percent of the population we own 50 percent of the wealth of the world. It is the only country in the world where people are driving up to the relief station in their own automobiles to collect relief. I am only afraid that in this case we are taking a step that will result in more harm than good.

Senator O'MAHONEY. I wonder if it is your opinion that the framers of the Constitution did the right thing when they gave Congress the power to regulate commerce among the States and with foreign nations.

Mr. HAAKE. I think they did the only thing they could have done. If I had been given the privilege, I think I would have done it the same way. I think it was the only reasonable thing they could do.

Senator O'MAHONEY. You do think there ought to be some regulation?

Mr. HAAKE. Yes.

Senator O'MAHONEY. But not in this particular form?

Mr. HAAKE. No.

Senator O'MAHONEY. Will you give us some suggestion of the form the regulations should take?

Mr. HAAKE. Yes. I can almost tell you now. I would suggest that the best form of regulation is to lay down definite outside limits,

not to try to come too close to the disease, come close enough to insure fair play. I would let nature take its course within those limits.

Senator O'MAHONEY. Limits as to what?

Mr. HAAKE. In a congested district we have got to have red and green lights. The fellow who controls those lights sometimes thinks that traffic could be better controlled if he had hold of the wheel. I would make a distinction between the lights by which he controls the cars and one where some bureau or individual sits alongside.

Senator O'MAHONEY. What are the lights you would have?

Mr. HAAKE. I am not a lawyer, and I am at a disadvantage when I say this.

Senator O'MAHONEY. You may not be.

Mr. HAAKE. I am willing to admit that I am, perhaps for technical reasons. I think if the antitrust laws were clarified a little bit, perhaps by defining monopoly, and then set out to enforce those laws with even the crude instrumentalities we have now, we could learn a lot. We are leaning a good many things all the time as to what is monopoly and what is not monopoly, and some of the things we have thought were monopolies we found were not monopolies, and some of the things we thought were monopolies we found were beneficial. Perhaps we need that sort of education before we take a further step toward regulation. There are a number of other laws that have been introduced or passed. Mr. Patman wants to separate retail and wholesale manufacturing. That is done not because, with all due respect to him, Mr. Patman is an authority on economic production or distribution. He does it because influential people in his community want him to do it. They are the people he works for. I would do it if I had to. I would try to pull it a little bit my way, but I would probably do it. It is not because he is an authority on the subject. The people who are asking for it are not qualified to judge whether it is a good thing or not.

I am afraid this legislation is subject to that criticism. I think Congress would render a tremendous service to the country if it would adjourn and go home. At this stage of the game, with the frame of mind the people are in, it is not more legislation we want. We want to get back on our feet, get hold of ourselves, get ourselves oriented again, and when we get a little stronger it is time enough to perform the operation. I would like to see the patient in better condition before we have another operation.

Senator O'MAHONEY. Thank you very much for your statement.

The committee will recess until tomorrow at 10:30.

(Whereupon, at 12:30 p. m. a recess was taken until the following day, Wednesday, March 16, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to recess, in room 212, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman) presiding.

Present: Senators O'Mahoney (chairman), Logan, Borah, and Austin.

STATEMENT OF JAMES A. EMERY, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS

Senator O'MAHONEY. Mr. Emery, you may begin by giving your name and occupation.

Mr. EMERY. My name is James A. Emery, Investment Building, Washington, D. C., and 14 West Forty-ninth Street, New York City. I am general counsel for the National Association of Manufacturers of the United States.

Senator O'MAHONEY. How long has the association maintained offices in Washington?

Mr. EMERY. Since about 1909.

Senator O'MAHONEY. For almost 30 years the National Association of Manufacturers has maintained offices in Washington?

Mr. EMERY. Yes.

Senator O'MAHONEY. Primarily because there is so much Federal legislation which affects the interests of the members of the association?

Mr. EMERY. Yes; and the operation of the courts and administrative bodies, all the departments of the Government, in relation to various matters, particularly rules and regulations which are of great importance, to all of which has been added the interesting field of taxation.

Senator O'MAHONEY. That scope has been increasing year by year since you opened your office, has it not?

Mr. EMERY. Oh, yes.

Senator O'MAHONEY. In other words, the relationship of the Federal Government toward the individual manufacturers or individual corporations throughout the United States has been constantly expanding?

Mr. EMERY. Constantly.

Senator O'MAHONEY. Very good, sir. You may proceed with your statement.

Mr. EMERY. Mr. Chairman, the National Association of Manufacturers is an organization of men engaged in the various forms of the manufacturing industry in substantially all the States of the Union.

It is interested in all matters that are of general interest to manufacturers. To the subject matter of this bill it has given a great deal of attention, not only since its introduction by you in January of 1937, but prior to that time it had given much attention at different times during the course of discussion of many problems under consideration during the years that preceded your own particular expression of interest in the subject. I am expressing views now that have been endorsed and approved by the association, not only through its board of directors, but in the convention of the association assembled last December, which had before it the second edition of your proposal, which has now reached the third edition not yet ready for popular distribution.

Senator O'MAHONEY. It has been very widely distributed.

Mr. EMERY. But not yet officially introduced in the Senate.

Senator O'MAHONEY. That is right. It is a proposed amendment.

Mr. EMERY. It has been presented in the House as the Mead bill.

Senator O'MAHONEY. Yes.

Mr. EMERY. I want to say, in connection with the matter, that the membership of the association is not composed, as is often the thought, merely of large employers of very large corporations. It includes individual firms and corporations of all sizes, and between 68 and 70 percent of its members are employers of 500 men or less.

Senator O'MAHONEY. What percentage of the membership are corporations?

Mr. EMERY. I could not say that offhand, but I should say a very large percentage, because the manufacturing industry is largely carried forward in corporate form. There are very small and very large manufacturers. Many specialties are carried forward by small operations. The reports of the Bureau of Internal Revenue illustrate that very effectively when you take the total comparison of all corporations engaged in manufacturing, particularly those which show a net profit and those which show a deficit. The Bureau says the deficit has a very large majority.

We are deeply concerned about this proposal, because we believe that, in the first place—and I shall not go into the economic side, except so far as it may be incidental to the discussion of the legal phases, since that has been covered in the discussion of many businessmen before you who speak with more authority than I could—but it does seem to me that in the course of this discussion it is worthy of note that corporations have been referred to critically, in terms which might be designated as epithets rather than instrumentalities of production in commerce.

I do not think that view is shared by the members of the committee, but I have observed something of that nature in the course of the hearings. A corporation is as much a tool of modern industry or commerce as any major invention that has been developed in our industrial progress. Without it, it would have been impossible to put together, either the capital essential to the operation of industry upon the scale which is necessary in the modern world, nor would it have been possible to secure the opportunity for the individual investment of millions of citizens who have put their savings into, not only the forms of production, distribution, merchandising, transportation, and communication through corporations which represent the collective savings of

millions of people, but it would have been impossible to provide the capital essential to develop the operations of these industries.

There are but two ways of accumulating capital. One is by the savings of individuals, the other by collective savings through business enterprises. The new capital which is essential to sustain and expand existing enterprise is obtained from reinvestment of profits in the business, or through the sale of securities, and these often represent the investments of great institutions like the insurance corporations. The whole business structure of the United States today rests upon a corporate foundation.

Senator O'MAHONEY. That, of course, goes without saying. It has been one of the principal contentions which I personally have been making ever since this bill was introduced. The problem is how to make these corporate enterprises best serve the public welfare.

Mr. EMERY. With that no one will disagree. The association has always taken a position in support of the rational regulation of corporate enterprise. It has throughout its existence resisted every attempt to weaken the terms or enforcement of the anti-trust acts. I refer to that matter because the corporation has given such a stimulating touch that we find that not only the future of industry, but the opportunities for employment and the savings of millions of our fellow citizens are wrapped up in the future activities and successful operations of corporate enterprises.

When you undertake to regulate corporations, you must bear in mind the character of the regulation proposed, as well as the penalty that may be inflicted upon a particular industry which may result in great hardships. The punishment of the corporation itself by fine or imprisonment, or both, may result in the punishment of thousands of innocent citizens as well as millions of innocent employees.

So that when we discuss the question of corporate regulation, we must take into consideration the particular economic situation, now perhaps the most serious in all business history; as the background against which this proposal is presented. For that reason, not only its economic, but the legal effect of the idea incorporated here, will greatly affect the future of this country, and, in my opinion, is a matter of the utmost importance.

By the findings of fact and declaration of policy, as well as by the terms of the proposed regulation, this bill undertakes to regulate, quoting from the last sentence of the preamble, "the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce."

The apparent effect of that is to compel the transformation of State into Federal corporations as a condition to engaging in interstate commerce. To assert the bill does not compel a reorganization of existing corporations, it seems to me, cannot be sustained, because it is apparent that it does compel a reorganization. The licensing of a State corporation, under terms fixed by a Federal control in the form of a statute, which changes the fundamental form and conditions under which it operates, is in effect a reorganization of the corporation.

When the corporation is reorganized the Commission will approve what the Federal Government substitutes for what the State government has granted, as a condition of its right to engage in commerce among the States; that is, compulsory reorganization of the corporate entity. The effect produced is therefore a compulsory reorganization of State-incorporated forms of business.

The administration of the Federal license is by the Federal Trade Commission. Without that license no corporation may engage in commerce, under threat of drastic penalties imposed upon the corporation, the individual officers, and directors. This affects necessarily both the stockholders and employees.

Now, before I enter upon a discussion of the objectives of the bill, and the methods employed to administer it, I want to ask the indulgence of the committee to discuss briefly one theory which seems to underlie this bill. A theory of law that has been frequently discussed in this country, and which was very well illustrated in a colloquy between the chairman and Dr. Beard, and which expressed itself later in the introduction of this bill, in which it was said that—

One of the reasons for the proposal here made is that the States are without jurisdiction over the field in which such corporations principally operate.

And again:

That the growth of corporations and the concentration of wealth in corporate hands has had an effect upon the practical and legal ability of the several States to control and eliminate effectively, and that such matters in effect can be controlled or eliminated only by congressional legislation.

Again, in Dr. Beard's testimony I notice his statement to the effect that it was the intention of the founders of the Government to provide that the National Government should have the power to do all those things which the States were not specifically empowered to do. It has been suggested again and again, that the authority granted to the Federal Government may be called upon when necessary to fill that gap in the twilight zone between State and Federal authority.

Senator BORAH. Do you contend there is a gap there that cannot be filled?

Mr. EMERY. I believe it can be filled by constitutional amendment, but not by the arbitrary assertion of power for the purpose of doing something that ought to be done, but for which the power has not been granted.

Senator BORAH. Do you contend that the Government is not granted fully and completely the power to regulate interstate commerce?

Mr. EMERY. I do admit that, but not the power to regulate local production.

Senator BORAH. If you treat it separate and apart from interstate commerce. You certainly do not contend that the National Government has not full and complete power to regulate interstate commerce?

Mr. EMERY. I do not, subject to other provisions in the Constitution. You cannot destroy the fourth and seventh amendments.

Senator BORAH. It may regulate the instrumentalities of interstate commerce, may it not?

Mr. EMERY. Yes; I admit that cheerfully. To the extent corporations are instrumentalities of interstate commerce, they may be regulated by the Federal Government; but I stand by the decision of the Supreme Court in the *Employers' Liability* cases that because a corporation is engaged in interstate commerce, the Federal Government is not authorized to regulate its local operations, except as they are directly related to that commerce. They are separate, mentally and physically. One is controlled by Congress, and the other is the creature of the State. The Court held in the *Carter* case that when men are engaged in production and commerce they are engaged in two operations, the first of which is production, and the other the distribution

of its product. Production is antecedent to the commerce, and without it there can be no commerce.

Senator BORAH. We agree on that fully, but the Supreme Court has also held in the opinion in the *Jones and Laughlin case* that where the production is intimately associated with interstate commerce, it may be to that extent regulated.

Mr. EMERY. Well, I think the Court has said again and again that it does not make any difference whether the obstruction to commerce arises in the locality or in the flow of commerce itself. It is completely within the control of commerce. But the Supreme Court said in the *Schechter case*, so emphatically that it is not to be overlooked or ignored, that—

the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system.

Senator BORAH. Quite right.

Mr. EMERY. Mr. Cardozo reemphasized that in his statement, that it is not a distinction without a difference, but the distinction involves a fundamental difference.

I want to say one more word on the question of latent power. I want to call the committee's attention to the fact that this has been repeatedly asserted. It was a favorite doctrine of Theodore Roosevelt for a considerable length of time. It found its ultimate expression in the famous *Kansas-Colorado case*, where the issue was whether the State of Kansas was entitled to the flow of the waters of the Arkansas River without impediment, or whether the State of Colorado could obstruct it and appropriate it for its own purposes to the detriment of Kansas, or whether the Government of the United States possessed superior authority over both of them. In the contention of Government counsel occurs this statement as part of the argument presented to the Court:

Whenever an object occurs, to the direction of which no particular State is competent, the management of it must of necessity belong to the United States and Congress assembled.

The Court, in rejecting the argument, restated it, and said:

It runs substantially along this line: All legislative power must be vested in either the State or the National Government; no legislative powers belong to a State government other than those which affect solely the internal affairs of that State; consequently all powers which are national in their scope must be found vested in the Congress of the United States. But the proposition that there are legislative powers affecting the Nation as a whole conflicts with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the tenth amendment.

State of Kansas v. Colorado (206 U. S. 89).

Senator AUSTIN. I would like to ask a question: Do we not go back in the search of our rights by treaty, to this point, to this fundamental thing—that the American Revolution was a revolution of Thirteen States, and when that became successful by victory and a treaty of peace was made, all the regalia of the Crown descended at once to the several States, not to a United States, not to a federal government. If you had a river, for example, the flow of which belonged to the Crown,

was a part of the regalia of the Crown, that descended to the States by treaty, and there we have the foundation of the whole theory of the great reservation of power, do we not?

Mr. EMERY. Yes.

Senator BORAH. I agree with that, but it is difficult to reconcile it with the *Chico* case, where the Supreme Court decided it was a power which descended from the Crown to the Federal Congress. I do not think there was any justification for it, but that was the decision.

Mr. EMERY. It was always clothed with a large power in foreign relations, than in domestic relations.

Senator BORAH. Our power in foreign relations was lodged in the several States, and the States transferred it to the Federal Congress to transact business for them as a unit. In that case the Court said that if the States had seen fit they could have individually exercised all their sovereign power with reference to foreign relations.

Mr. EMERY. I think that was done as a result of the hopeless conflict that arose between them.

Senator O'MAHONEY. Was not that case really an attempt on the part of the Court to recognize the essential unity of the Thirteen Original States, as far as foreign relations were concerned?

Mr. EMERY. I think so. Mr. Justice Sutherland covered that in his notable lectures before he came on the bench.

I want to call attention to the fact that under that theory there is sufficient power in the National Government to do anything the States were not competent to do. Senator O'Mahoney's comment on it brought out the thought that the power existed. I thought the Senator's question was very sympathetic, and I want to call attention to the fact that Mr. Randolph's proposal of the Virginia plan was commented upon by the Supreme Court in the *Carter Coal* case, as follows:

In the framer's Convention, the proposal to confer the general power akin to that just discussed was included in Mr. Randolph's resolutions, the sixth of which, among other things, declared that the National Legislature ought to enjoy the legislative rights vested in Congress by the confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

That idea was discussed and rejected, and they substituted the theory of enumerated powers. That is one of the ideas that underlies this reach for authority to do the things that are sincerely believed to be necessary, but for which no specific or implied authority can be found.

Senator BORAH. I am not claiming any authority that does not come from the language of the Constitution of the United States. I am not looking for any hidden power.

Senator O'MAHONEY. There is no search for power going on here.

Mr. EMERY. I think there is a search for power that has not been found, but is expressed. I observed in one of your statements something that interested me very much, which was that you proposed to grant to the Federal Trade Commission nothing but "ministerial authority." I do not think anyone will question your sincerity of purpose in that respect; but it seems to me when you examine this bill carefully you will find that it contains not only ministerial authority, but a large body of discretionary authority, and that, while changed in form from your original suggestion, it has been enlarged in the last edition.

It seems to me, Mr. Chairman, that the conception of the power which underlies this measure includes authority outside of and beyond the commerce power. The conception presented in the bill is found in the findings of fact and declaration of policy. The objective of that policy is clearly stated in the concluding phrase that—

it has become and is necessary to regulate the terms and conditions on which corporations may produce and distribute commodities for the purposes of interstate commerce.

The definition of that commerce is found in section 2 (a). It is found in your description of the corporation which is to be the subject of regulation. It is further found in paragraph (1) of section 2, which is perhaps the most inclusive of all, because it expands what commerce is, by determining what engagement in commerce is, including not only persons who may actually be engaged in trading, but including concerns that may be engaged in commerce without ever being engaged in traffic between the States under any circumstances; that is, by exercising influence upon a corporation for a purpose disconnected from commerce. That not only makes a corporation otherwise exempted engage in commerce, but places it within the reach of the governing power of this bill.

The term "commerce" includes not only the usual definition which has been repeated over and over again in the statutes of the United States, and which has been described by the Supreme Court of the United States as intercourse for the purpose of trade and as an antecedent circumstance thereto; it includes—

the collection of raw materials and equipment in commerce as above defined for the production and the production therefrom, of any article or commodity to enter the flow of, or which affects, commercial intercourse with foreign nations or among the several States, or between the District of Columbia and any Territory of the United States, or any State, Territory, or foreign nation.

And there is a conjunctive connection at the end of that phrase to which I specifically call attention—

the sale or transportation of any article or commodity so produced in the course of commerce, as above defined, to retail dealers in any State, Territory, or possession of the United States, or the District of Columbia.

That concluding conjunctive statement would bring within the purview of the bill any corporation producing or distributing to a retailer in any State within which the corporation produces, whether it is required to be licensed or not. I protest the suggestion that the conception of commerce stated here as "production for commerce" or "production to enter commerce" is not separate and distinguishable from the acts of engagement in commerce itself. Certainly over the long period of time from *Veazie v. Moor* (55 U. S.) up to the last case decided under the commerce clause, it has been held over and over again, in cases in which the regulation of commerce by States was under consideration, and where the issue presented was "where does the taxing power of the State stop," that the tax which the States might otherwise levy upon commodities moving in commerce is not a burden upon that commerce, although the goods taxed are intended for commerce.

If that theory be true, then it is an engagement in commerce within the meaning of this act for anyone to produce on the farm or in the factory or mines, with the specific intention that the subject matter may thereafter move in commerce. If that justifies Federal control

or regulation under the commerce power, then the States cannot tax those articles which contemplate movement in the commerce, because it would burden what Congress has declared to be an article of commerce.

Senator O'MAHONEY. Let me call your attention to page 5 of the bill, and the language contained in lines 11 and 12.

Mr. EMERY. Yes.

Senator O'MAHONEY. If the phrase which appears at the end of line 11 and in line 12, as follows:

in the course of commerce, as above defined—

were taken out of that portion of the bill and transposed or inserted after the word "transportation" in line 11, so that the entire conjunctive phrase to which you referred would read:

and the sale or transportation in the course of commerce, as above defined, of any article or commodity so produced to retail dealers in any State, Territory, or possession of the United States, or the District of Columbia—

would that make any difference?

Mr. EMERY. Other than the State of production.

Senator O'MAHONEY. Is that necessary?

Mr. EMERY. If you do not exclude the State of production, you would have merely transportation or trade within the State. It would not become a transaction between the States and in interstate commerce, unless it related to some remote transaction.

Senator O'MAHONEY. I would like your opinion of the effect of that transposition without the use of the words you suggest.

Mr. EMERY. So far as the definition is concerned, when you have confined it to traffic between the States, and have a limit of regulation to that which is substantially related to it, I think you are exercising a valid authority; but that would not remove the objection with regard to the earlier provision of the underlying theory of this bill. It underlies and is written throughout it. It always rests upon the proposition that an article that is produced for commerce can be regulated under the commerce power, because it is intended to move in commerce which makes the producer an instrumentality of commerce, although the producer may change his intention. Every decision of the Supreme Court has recognized the difference between the intention to move and the actual movement of the goods. If you do not do that, your theory destroys the taxing power of the States.

To show you how that may operate, I call your attention to the case of *Heisler v. Thomas Colliery Company*, 260 U. S., 245. There anthracite coal was loaded on a car and about to be moved in commerce, but the commercial movement had not begun. It was destined for commerce. It was the intention to move it. The question was whether the State of Pennsylvania could tax it at that point.

Senator O'MAHONEY. Of course, the courts have stated they do not extend the commerce power, so we have used language to that effect. It was not the intention to do so. We are trying to follow the decisions of the Supreme Court from John Marshall to the Jones-Laughlin decision. We recognize fully that we have no authority in Congress to extend the power beyond that defined by the court on constitutional grounds. If we had simply said in this bill that we propose to deal with interstate commerce, that would have covered the matter. In my opinion, that would have covered the thing to which you object,

but it would not have covered the production of an article in a State which is contemplated to be moved in interstate commerce. We do not claim that.

Mr. EMERY. That is exactly the theory of the bill. Whatever the words may be, again and again the bill contemplates control of production for commerce. How else do you reach the conditions of the license? You cannot extend the commerce power by a licensing system.

Senator O'MAHONEY. Of course not.

Mr. EMERY. You cannot extend the language beyond the regulatory authority, and if the purpose is invalid the license falls.

Senator O'MAHONEY. Of course. I do not contend that we can extend it by license any more than by an act of Congress.

Mr. EMERY. I think I can show you that the bill does. The language proceeds to say that the corporation may not do things which are not within commerce.

Senator O'MAHONEY. If it does, that should be corrected.

Mr. EMERY. I am compelled to discuss the bill before me.

Senator BORAH. We are not admitting that your construction is correct.

Mr. EMERY. All right. I will have to yield to your great learning.

Senator BORAH. No; you do not have to yield to anything. We want your individual views.

Mr. EMERY. That is what I will give, with your indulgence.

I want to point out that again and again the courts have said that if you take the theory that because goods are brought together and produced for commerce, even though they are made outside the movement of commerce, there is no authority to regulate the conditions under which that production may be had. They have said again and again that if you say that, then you nationalize the commerce of the United States. Let me read the language in *Veazie v. Moor*, in 55 United States, where the court said:

Nor can it be properly concluded that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, the control of the means or the encouragements by which enterprise is fostered and protected is legitimately within the import of the phrase "foreign commerce," or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may not become the subject of foreign commerce, and be borne either by turnpikes, canals or railroads, from point to point within the several States, towards an ultimate destination, like the one above mentioned.

Senator O'MAHONEY. What was the citation?

Mr. EMERY. *Veazie v. Moor* (55 U. S., 567).

Senator BORAH. Take the case of a corporation like the Jones-Laughlin Co. It had unified production and shipment. That is, it had the mines where it produced, and produced for the purpose of shipping in interstate commerce. The Supreme Court came very near saying, and I think did say, that constituted one transaction.

Mr. EMERY. No; I do not agree with that interpretation. What it did say, with due respect to your great learning, was that in the *Jones-Laughlin case* the issue presented was an adumbration of what

already had been said in the *Schechter Poultry case*. I want to call attention to what was said there.

Senator BORAH. But the *Schechter case* was distinguished from the *Jones-Laughlin case* by saying that in the *Schechter case* the goods had come to a stop; that they were undertaking to deal with the goods after they had come to a stop in the State; but Chief Justice Hughes said that is not the case with goods moving from production to ultimate consumption, and we cannot divide it. We must take into consideration the doing of all these things—production, manufacturing, service, transportation, and all.

Mr. EMERY. Let me call your attention to this statement in the opinion in the *Schechter case*:

The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intra-State operations.

That in part sustains the theory of the *Jones-Laughlin case*. As you said, in the *Schechter case* the goods had come to a rest. In the case to which I refer the commerce had not begun. The rule must be the same before it begins as when it terminates. If the congressional power does not reach the goods at rest, it cannot reach the goods which have not started, if we are going to consider the goods alone.

In the *Jones-Laughlin case*, it seems to me there is no question whatever relating to the movement of goods. The question presented in that case was whether or not the Congress, in the light of its experience in dealing with labor disputes which threatened an interruption of commerce, is entitled to say that a denial by an employer of the fundamental rights of organization by the employees, threatens to produce an interruption of commerce or burdens it.

It was to avoid effect of the dispute that the court sustained the power of the Congress to prevent the conduct that would lead to an interruption of commerce. That alone is the point upon which the whole case moved. The whole discussion of the character of the operations of the Jones-Laughlin Co. was for the purpose of showing its effect of the dispute upon the movement of that commerce.

I want to call your attention to decisions of the court over and over again touching upon this phase. In *Heisler v. Thomas Colliery Co.*, 1260 U. S. 245, the court said:

If the possibility, or, indeed, certainty of exportation of any product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State—

Precisely as you have said, and after it came to rest—

It would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to Federal commercial control the fruits of California and the South, and the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet "on the hoof," wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production.

Senator BORAH. Do you know who wrote that opinion?

Mr. EMERY. No. I will be glad to put that in. I think it was written by Mr. Stone.

Senator BORAH. Just one more question.

Mr. EMERY. Yes.

Senator BORAH. Your contention is that if that strike or labor trouble in the *Jones-Laughlin case* had not taken place in the mines where the ore was produced, it would not have been subject to the control of Congress and the decision of the Supreme Court would have been different?

Mr. EMERY. Now, you have two cases that answer your question, I think. I think you are familiar with both of them. They are the two *Coronado cases*, in the 247 and 257 U. S. In one case the question presented was in an action for damages against a union, as to whether or not the purpose of the strikers was to affect or to interrupt or to burden commerce. The court said that the strike was wholly local and that it neither interrupted or directly affected or burdened commerce.

In the second case you have a different situation. There proof was offered that an international union, of which this other union was a member, had taken part in the struggle and had undertaken to say that no coal should move in commerce from these or other mines unless their demands were granted. The intention was to burden commerce, to interrupt it, and in the light of that fact the court held that the congressional power to regulate commerce was involved.

That is the issue presented by your question, it seems to me.

Senator BORAH. This material which had been produced in the mines was shipped from Pittsburgh to a little town in Pennsylvania, the name of which I do not remember, where it came to a rest. There it was manufactured. As far as the raw material was concerned, it passed into a manufactured state. The Supreme Court held that, notwithstanding it had come to a rest at this time, being changed to a manufactured article, it was ultimately destined for other points and, therefore, came within the rule of interstate commerce.

Mr. EMERY. What was that case?

Senator BORAH. That was the *Jones-Laughlin case*.

Mr. EMERY. Oh. I deny that the implications of that case go to the control of material. They go to the protection of the employees for the purpose of preventing a dispute which would seriously injure commerce, the experience of Congress having been that these disputes multiplied when these rights were denied and where employers refused to negotiate with employees, Congress then laid upon the employer the affirmative obligation to negotiate, for the purpose of preventing an interruption to commerce. It was a course of conduct that was made the subject of regulation, and not the control of the material. That was merely to illustrate the various interruptions that were threatened.

Senator BORAH. The truth is that it is very difficult to harmonize the decision in the *Jones-Laughlin case* with these other decisions you have cited.

Mr. EMERY. I do not think so, any more than it is difficult to harmonize your position on the antilynching bill with the position you now take. I thought you had completely demolished that bill, in the light of the cases decided in the reconstruction period that, if the Congress undertook to write a criminal law in a State, it had no power to do it. It seems to me in this bill you are reaching toward the promise, without entering the State, to write a law to control

the creature of the State without the States consent and to control the production of an industry which is purely local in all its relations.

Senator O'MAHONEY. After all, it comes down merely to the question of what does or does not affect national commerce.

Mr. EMERY. Yes.

Senator O'MAHONEY. You are taking the language of this bill and building your case upon the assumption that it is the intention of the authors of the bill to stretch the commerce power beyond the constitutional definition. Senator Borah and I deny the validity of that contention. So that whatever argument you are now making is merely an argument with respect to whether or not a particular definition is the correct one. You say that is the definition; we say it is not. We proclaim that the only purpose of the bill is to operate within the constitutional limitation of the commerce power. We seek the broadening of that power as set forth in the first place by John Marshall and in the last place by Charles Evans Hughes. Marshall in the *Ogden case* and Hughes in the *Jones-Laughlin case*. What you are doing is making an argument based upon a particular type of interpretation. I have no doubt that you will immediately acknowledge that there are certain types of production which do, without any question, affect interstate commerce.

Mr. EMERY. I do not know of any. Affect it?

Senator O'MAHONEY. Yes.

Mr. EMERY. Yes. If you use the word in that broad sense, I agree; but when you use it in a constitutional sense, I disagree with you.

Senator O'MAHONEY. That word is not in the Constitution.

Mr. EMERY. No.

Senator O'MAHONEY. That is a refinement which was developed in particular cases which had to do with the operation of a particular law. In framing legislation we cannot look at it from the point of view of a particular case, but from the point of view of the public interest as well.

Mr. EMERY. Yes. If you will permit me, I am compelled to judge this bill from the language employed.

Senator O'MAHONEY. You are entitled to do that. As I said before, we may have used inappropriate language to convey our thought.

Mr. EMERY. I do disagree with your distinction with respect to the word "affect," which the courts have said means a substantial or direct effect upon commerce, which is very different from a remote effect upon commerce. It seems to me it is very much like the man who declared there was no difference between a person in jail and one out of it, except that they were on opposite sides of the same wall.

Senator O'MAHONEY. Please do not credit me with that distinction. That must be ascribed to John Marshall, because he set it forth very distinctly.

Mr. EMERY. If John Marshall ever made any such distinction as that, I never found it. It seems to me that if there is one distinction that runs through every decision from beginning to end it is the one I have been trying to suggest between production and commerce.

Senator O'MAHONEY. Just as an illustration of how these distinctions were drawn by the courts, let me cite the case of *Kidd v. Pearson*, as to how these declarations by the court arise. That was a case in which the plaintiff was engaged in the manufacture of beer, and the State passed a law prohibiting its manufacture. So the plaintiff, seeking to evade the effect of the prohibitory statute, said "We are

engaged in commerce." The court, in order to sustain the power of the State to pass the prohibitory law against the manufacture of a particular commodity, handed down a decision that the contention of the plaintiff that he was under the commerce clause, and that the act of the State was an invasion of the commerce power, was not well founded. That decision has been used in other cases.

Mr. EMERY. The *Veazie-Moor* case preceded that by 40 years. In the *Kidd-Pearson* case that is a substantial distinction, one involving the police power of the State to control the manufacture of intoxicating liquor.

I have said enough about the commerce power as it is employed here, but I do want to say a word about the relation of these definitions to one another. I have spoken of the definition of commerce. The word "corporation" includes more than corporations. It includes unincorporated bodies, limited partnerships, or associations. An association may not be incorporated. There are 10,700 cooperative associations engaged in marketing and purchasing for the farmer. They represent a business of about 2 billion dollars a year. How many will come under the influence of this bill depends upon their assets at a particular time. If within 3 years of the effective date of the bill they had gross assets of the value of \$100,000, they would come under the bill. That valuation is pretty small for any manufacturer. The number of employees depends upon the character of the manufacturing industry. There are no figures available for limited partnerships.

I want to call attention to what engaging in commerce is. I have never heard in my limited reading a discussion of the suggestion that a corporation could be said to be engaged in commerce if by "any device or means, direct or indirect, it exercises or attempts to exercise direction or control over a corporation engaged in commerce."

Senator O'MAHONEY. What are you reading from?

Mr. EMERY. Page 6 of the bill, under subparagraph (j). The purpose of that is to determine when a corporation engages in commerce. You have already defined the word "commerce." Here you undertake a further definition. The prospective licensee is also said to be engaged in commerce if, "for the purpose of controlling or influencing the management of any corporation engaged in commerce, it owns stock or securities of such corporation, or if by means of any advance, loan, voting trust or trusts, holding company or companies, or any device or means, direct or indirect, it exercises or attempts to exercise direction or control over the corporation engaged in commerce."

I presume, first of all, that the committee will take notice of the actual circumstances of business in a time like this. Let us say that already a contract has been made, and machinery has been sold. In return for it other forms of corporate security may be given. A corporation may attempt to avoid bankruptcy by offering some of its stock as collateral, or the creditor corporation may make a loan or advance to the debtor corporation to protect its interest in the goods sold. There are thousands of such cases today.

I call your attention to this condition, which means that thousands of corporations are temporary owners of stock or have made advances or loans to other corporations. Under this bill, it makes no difference what the purpose may have been. They are often made

to keep the business going and employment stabilized. Hundreds of millions of dollars are involved in such transactions.

If a creditor corporation undertakes to control to any extent or advise or urge a particular policy upon a debtor corporation, it becomes engaged in commerce, under the definition in this bill. That is only one example. If a creditor corporation makes a loan to a debtor corporation, it comes within that unusual definition of commerce. I am not taking one idea. I am trying to take the picture as a whole, and the conception of commerce underlying it, the powers of government, the nature of the subject matter, in an effort to arrive at a definition of what engaging in commerce is, and it seems to me under this bill it is quite different from the original John Sharp Williams bill.

Then we come to the licensing provisions.

Senator AUSTIN. Before you leave the subject of definitions, do you recognize that wherever "person" is used that includes corporations?

Mr. EMERY. The word "person"?

Senator AUSTIN. Yes; in our law.

Mr. EMERY. Well, it does, with respect to substantial constitutional rights. The constitutional rights of a corporation for protection to its property do not differ from that of a natural person. I observe that a recent distinguished Member of the Senate, now on the Supreme Bench, Justice Black, in a recent opinion announced that the word "person" had never been recognized as applicable to corporations under the fourteenth amendment.

I would like to call the committee's attention to the fact that ever since the foundation of this Government the word "person" has included corporations, and that the Supreme Court of the United States early rejected the suggestion that the word "person" did not include a corporation.

Now, may I call attention to a case that illustrates the point I should like to call to the chairman's attention, the case of *The Society for the Propagation of the Gospel in Foreign Parts v. The Town of New Haven* (8 Wheaton, 404, Fifth Law Ed., 662).

Senator AUSTIN. That related to the early history of Vermont, did it not?

Mr. EMERY. Yes; it was decided in 1823. In that instance the corporation had received a grant of lands from the Crown. The Legislature of Vermont undertook to confiscate those lands after the Revolution, on the ground that it was a foreign corporation and its rights by alienage had been terminated, and that the lands should be properly taken from it and turned over to the town of New Haven. The corporation contested that case through Mr. Hopkinson, the position of Vermont was defended by Daniel Webster, and Bushrod Washington wrote the opinion. Mr. Webster contended that the treaty between Great Britain and the United States, which was offered in evidence in support of the right of the corporation to retain its property, applied only to natural persons and not to corporations.

Mr. Justice Washington, in writing the opinion, took that very question up and first pointed out Mr. Webster's contention, calling attention to the following language in the treaty of 1794:

There shall be no future confiscations made, nor any prosecutions commenced, against any person or persons, for or by reason of the part which he or they have taken in the present war; and that no person shall, on that account, suffer future loss or damage, either in his person, liberty, or property.

Mr. Webster contended that applied only to natural persons. Justice Washington goes on to say:

Now, the parties to that treaty have agreed that there shall be no future confiscations in any case, for the cause stated. How can this court say that this is a case where, for the cause stated, or for some other, confiscation may lawfully be decreed? We can discover no sound reason why a corporation existing in England may not as well hold real property in the United States, as ordinary trustee for charitable or other purposes, or as natural persons for their own use.

Senator O'MAHONEY. That case has no application here, unless it should be contended that the Federal Government has no authority, under the commerce clause, to control the nature, the structure, the powers, or responsibilities of corporations engaged in commerce.

Mr. EMERY. I want to call your attention to what I think is the limit of that power. I would like to call your attention first to another statement from this ancient case, where the court said:

But if it be true that there is no difference between a corporation and a natural person, in respect to their capacity to hold real property; if the civil rights of both are the same, and are equally unaffected by the dismemberment of the empire, it is difficult to perceive upon what ground the civil rights of a British corporation should be lost, as a consequence of the Revolution, when it is admitted that those of an individual would remain unaffected by the circumstance.

He then holds that the word "person" in the treaty includes artificial as well as natural persons.

Let me call attention the fact that the method by which this law is to be enforced is through the Federal Trade Commission, with the requirement that all corporations, associations or limited partnerships who consider entering into interstate commerce shall apply for and receive a license, without which they may not engage in such commerce, and that the conditions of the license are to be fixed by statute.

In your former bill you gave discretionary authority to the Federal Trade Commission to add such further conditions to the license as were necessary to affect the purposes of the act. That you have dropped.

Now, the right to a license, which may not be granted if the applicant has heretofore engaged in any acts prohibited by the antitrust acts, must rest upon the regulatory authority of the licensor. If that does not exist, it cannot be sustained. If what we have said with respect to the commerce clause be true, then the requirement of the license is not an exercise of valid authority.

Of the 10 conditions attached to the license, 8 are not in any way directly related to trade or commerce. They relate to a variety of subjects which have absolutely no connection or a remote relation to trade or commerce.

Mr. Reed in his testimony suggested an idea, which I perceive Senator O'Mahoney has adopted, to the effect that the Congress should endow the board of directors of every corporation with authority to accept any restrictions which Congress might make, without referring the same to the stockholders. This seems to me to be rather a departure from your democratic ideas, by which you give the directors a power which you do not give to the stockholders. Much of your complaint has been that the directors are doing things the stockholders do not want done. I doubt your power to change the corporation without the consent or knowledge of the stockholders. I will call your attention to what the Supreme Court said about that.

The conditions of the license to which I have referred are written into section 5, and are apparently final; but in section 7 we find that all unlicensed corporations or associations may be brought within the provisions of the act, if it be found that they have an advantage in competition over the licensed corporations, or if the conduct of their business is not in accordance with the rules laid down for the licensed corporations. Then, upon notice and hearing, the Commission is empowered to bring them within the licensing provisions.

Now, with respect to the application for license, the Commission may reject every application in respect to which it is found there has been some violation of the antitrust laws. So that every corporation faces the prospect that such a charge may be brought against it. Among the conditions of the license are not only all the rules that apply to the antitrust acts from the Sherman Act to the Robinson-Patman Act, but the new phrase that has not received judicial interpretation of "unfair and fraudulent practices."

With respect to corporations under section 7, I notice the power of the Commission is different from that elsewhere granted. After the Commission has granted a license in certain cases it may, without application to the Attorney General, revoke those licenses at any time, and has the final power to do it. You will find that in section 7, page 15:

The Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part, any order issued by it under this section, and any such order may, upon petition of the corporation to which such order is directed, be reviewed, in the same manner, so far as applicable, as is provided in the case of an order issued by the Commission under section 5 of the Federal Trade Commission Act, as amended.

That does not require the intervention of the Attorney General. The power is vested exclusively in the Federal Trade Commission.

Finally, I want to call your attention to the penalties in this act. There are at least 15 distinct penalties of the most drastic character that may be visited upon corporations, their officers or directors. Certainly, in the long list of penalties provided there, nothing has been overlooked, with the possible exception of capital punishment, and I presume that was impossible since the corporation was fictitiously presumed immortal. It may, however, be dismembered and exiled from business. Its officers, if chiefly responsible for violations, may be dismissed from all business life, and can never be employed by any corporation engaged in interstate commerce as an officer or director. The violating corporation cannot even sue in the Federal court in behalf of its stockholders to recover property belonging to them or damages that may be their due. But the stockholders and employees will also be the victims. The corporation officers and directors may be fined or imprisoned or dismissed from employment. The corporation itself may be fined a percentage of its capital stock. The amount of that has been left blank. In the John Sharp Williams bill it was 10 percent. Perhaps the Senator is in a more generous frame of mind and will make it less.

The revocation of a license means the exile of the corporation from business. It means its dismissal out of business life. If it no longer produces and engages in commerce, the stockholders may suffer the loss of their property and the employees their jobs. These punishments are inflicted upon the stockholders and employees, upon the

innocent as well as the guilty, for the commission of offenses with which they had no connection and of which they had no knowledge. It is the most drastic body of penalties found in any Federal proposal.

Finally, the Commission has almost unlimited discretion and power to supervise and examine the operations of every corporation engaged in business, for the purpose of effectuating the purposes of the act. However mild the distinguished chairman may be, I have in mind some of the drastic actions taken by other administrative bodies. The whole corporate business of the country would live under the continual scrutiny of the Trade Commission, in respect to which there is no limit upon the inquisitorial power of the Commission. The most confidential matters, sought to be protected by the fourth amendment, are exposed here without any protection whatever. The officers and employees of the Commission may become possessed of trade secrets of the highest importance to every business in the United States. But nowhere is their betrayal made punishable.

While there is much more that could be said, I will not go further except to take up the final objection, as to whether Congress may validly undertake to exercise the authority proposed in the manner contemplated to effect a compulsory reorganization of State organizations, corporations, and associations without the consent of the State. What is proposed here, as I have said, is the compulsory reorganization of every State creation.

Senator AUSTIN. To what section do you refer?

Mr. EMERY. I am referring now to the conditions of section 5, beginning with subparagraph (a) and continuing to (k). Every corporation or organization which does not operate in the manner provided in those sections must reorganize as a condition of obtaining a Federal license.

Let me call your attention to the further fact, and I do not know whether it has been brought to your attention or not, but I think it is very important; that where a license is revoked or an application is not granted, especially in the latter case, there is the implied authority to again receive the application and grant it if the applicant complies with the conditions required by the Commission. Of course, you will realize that, as a condition of granting a license, the applicant must not only furnish the information required in section 3, but it is specified in great detail, and would involve considerable expense. All the information that may be required is not enumerated there, because the Commission is authorized to require any further information it thinks necessary in the public interest and to effectuate the purposes of the act.

I want to call attention to the further extraordinary provision that, when a license has been revoked, the Commission may reissue such license if satisfactory evidence be presented of the willingness and capacity of the licensee to comply with the conditions, required including the making of suitable restitution by the licensee as determined by the Commission to any parties who may have been adversely affected by the violation for which the license was revoked. The word "restitution" must mean one of two things or both. It must mean in case of an employee affected by the first two provisions of section 5 who may have been discharged or lost his job, or denied the right of organization, to be reinstated. In the second place, it must mean, with respect to other corporations adversely affected by the

violation of the licensing provisions, that the Commission has the right to grant without a jury such restitution and assessed damages against the corporation for any injury it may have done to competitors as a result of the violation of the license. Here is an extraordinary judicial power conferred upon the Commission to assess damages as a condition of renewing the right to engage in commerce.

Let me turn to the question of the right of the Federal Government, on the strength of the commerce clause, to prescribe conditions for the organization of those corporations of the States. We recognize the right of Congress to regulate and to control the operations of a corporation while engaged in commerce to the extent that it is an instrumentality of commerce, but to the extent that it is not an instrumentality of commerce it is not subject to such regulation.

I do not think that distinction is more clearly made than in the *Employers' Liability cases* (207 U. S.), where an act was held invalid because it undertook to regulate the purely local affairs of a railroad company which was otherwise an instrumentality of interstate commerce, but, nevertheless, said the court, the right to regulate the railroad while engaged in commerce does not extend to the regulation and control of its purely local affairs. That opinion was written by Chief Justice White. A second act cured that defect.

In 1935 Congress passed the Home Loan Act, and among the provisions of the fifth section was one to the effect that the members of the Federal loan bank or building and loan association could become members, if they so desired; but all the members of these banks would be transformed into Federal Building and Loan Associations upon the vote of 51 percent of the stockholders present at a meeting called for that purpose.

Certain building and loan associations in Wisconsin availed themselves of that provision and became members of the home loan bank as Federal associations. The result was a controversy with the State of Wisconsin, participated in by the State banking commissioner and the Federal authorities. The commission applied for an order to deny the right of the Federal Government to transform these building and loan associations into Federal corporations. There were two suits brought by the building and loan associations. There were three suits brought by the State banking commissioner attacking the proceedings by which the State associations became Federal associations.

Mr. Justice Cardozo wrote the unanimous opinion of the Court. I want to call attention to some of the things he stated in that opinion. He said Congress could create building and loan associations for its own purpose, it could create any instrumentality that was rightfully adapted to the performance of its purpose. He said it was evident that Congress intended to occupy the field to the exclusion of the States. He said:

The Home Owners Loan Act, to the extent that it permits the conversion of State associations into Federal ones in contravention of the laws of the place of their creation, is an unconstitutional encroachment upon the reserved powers of the States.

That is the tenth amendment.

"If" says the Court, "section 5 (i) may be upheld when State laws are inconsistent"—

That is the conversion of State associations into Federal associations by a vote of 51 percent of the stockholders without the consent of the State—

any savings bank or insurance company as well as any building and loan association may be converted into a savings and loan association with a charter from the central government, provided only that 51 percent of the shares represented at a meeting vote approval of the change. Indeed, as counsel for the petitioners insisted at our bar, the power of transformation, if it is adequate in such conditions, is not confined to building and loan associations or savings banks or insurance companies or to members of the home loan bank, except by the adventitious features of this particular enactment. It extends in that view to moneyed corporations generally and even to other corporations if Congress chooses to convert them into creatures of the Federal Government. Compulsion, by hypothesis, being lawful, the percentage of assenting shares voted in a given instance or exacted by a given statute assumes the aspect of an accident. Fifty-one percent is the minimum required here. Another act may reduce the minimum to 10 percent, or even 1, or dispense with approval altogether. If nonassenting shareholders or creditors were parties to these suits, the question would be urgent whether property interests may be so transformed consistently with the restraints of the fifth amendment. Shareholders and creditors being absent, we have instead the question whether consistently with the tenth amendment, the change may be made under license of the central government against the protest of the State.

The critical question,

says the court,

is whether along with such a power there goes the power also to put an end to corporations created by the States and turn them into different corporations created by the Nation.

That is precisely what this bill proposes to do, and to do it under the commerce power, and to do it not by a vote of the stockholders, but to empower the directors to accept any restriction Congress may place upon State corporations, without the consent or approval of the stockholders.

Furthermore, it is provided in section 3 as an indispensable condition of application that board of directors must certify to the Commission that they accept any future restriction that Congress may place upon the operations of the corporation. I submit that if any future limitations Congress may place upon the corporation are valid and the directors may consent thereto without the approval of the stockholders, then the right to object to an invalid restriction is waived by such a surrender of corporate power and the corporation may not protest an invalid act by the Congress. The court goes on in the Wisconsin case above referred to and says:

In its capacity of quasi-sovereign, the State repulses an assault upon the quasi-public institutions that are the product and embodiments of its statutes and its policy. Finding them about to deviate from the law of their creation, it is met by the excuse that everything done or purposed is permitted by an act of Congress. The excuse is inadequate unless the power to give absolution for overstepping such restrictions has been surrendered by the States to the Government at Washington.

The proposal in this bill is the authority to transform a State corporation into a Federal corporation. It is true that the Interstate Commerce power was not an issue in the Wisconsin case, but what was an issue was the power of Congress to change a State instrumentality into a Federal creature, just as you are undertaking here to control and reorganize these corporations in order to regulate commerce. In the Wisconsin case it was done for the purpose of executing an otherwise lawful policy, without the consent of the State. And there

Justice Cardozo, who certainly will always be regarded as a most progressive member of the Court, said you cannot seize or reorganize a corporation created by the State without the consent of the State. Least of all can you do it by simply permitting a small percentage or even a majority of stockholders or directors to determine the change, when the State is left out.

Senator O'MAHONEY. You have come to the conclusion that a State, having created a corporation for the purpose, let us say, of engaging exclusively in interstate and foreign commerce, and having accepted that corporate instrumentality in operation, it thereafter is impossible for the Federal Government by act of Congress to impose any restrictions upon that corporation with respect to its corporate status.

Mr. EMERY. I did not say anything of the kind.

Senator O'MAHONEY. I want to find out to what extent you go.

Mr. EMERY. My point of view is that of the Supreme Court. It is not my view.

Senator O'MAHONEY. Will you state your view?

Mr. EMERY. Yes. My view is that no State, under any circumstances, could create a corporation to engage exclusively in interstate commerce, under any conditions that Congress might validly provide. The control of Congress over interstate commerce I do not question. What I do question is the right of Congress, under the guise of regulating commerce, to regulate the conditions of production and the relations that arise in production, because the corporation while engaged in production may intend to engage in commerce.

Senator O'MAHONEY. Of course, I recognize that contention. That is not my question. I am asking you one question and you are giving me the answer to another.

Mr. EMERY. I answered the first question.

Senator O'MAHONEY. Not very clearly. At least, it did not get over to me. I am trying to determine whether or not you entertain the view that, if the State has in the first instance created a corporation to engage in interstate commerce and nothing else, and has given that corporation, as, of course, it would necessarily have to do, a certain corporate existence, and thereafter the Federal Government undertook by statute to lay down certain conditions with respect to its corporate status, under that decision of the Supreme Court Congress would not have that power?

Mr. EMERY. The answer I gave——

Senator O'MAHONEY (interposing). I did not quite get it.

Mr. EMERY. The answer I gave was that I cannot conceive of a State creating a corporation to engage in interstate commerce in conflict with any regulation of commerce in the field of Congress.

Senator O'MAHONEY. And you have told us why you do not think that, because it is an exercise of the regulation before the existence of the corporation.

Mr. EMERY. It makes no difference whether it was before or after. Senator O'MAHONEY. That is what I wanted to get.

Mr. EMERY. Not the slightest.

Senator O'MAHONEY. Thank you. You have answered it very clearly.

Mr. EMERY. Yes. That concludes any statement I have at this time.

Senator O'MAHONEY. Do you care to ask any questions?

Senator AUSTIN. No. Mr. Emery has made a very fine statement that has interested me greatly.

Senator O'MAHONEY. It has been very interesting to all of us.

Mr. EMERY. I would like to call attention to another matter which I think is important in this connection, and that is the question of the concentration of wealth and the necessity of control of monopoly. The first and important thing is to define monopoly, so we will not be confused. I would undertake to defend anywhere a monopoly which offered superior service and quality at lower prices, and which by attaining thus size and strength has the efficiency to overcome its competitors.

Senator O'MAHONEY. I do not think you will find much dispute about that.

Mr. EMERY. The second question is whether there ought to be a limit placed upon corporations on account of their mere size or wealth, and what ought to be such limit. It is a very serious question. I think a still more serious question is not who owns and operates property but who consumes the product. I assert that the question of who consumes the product is of superior importance to who owns it. My notion of that matter corresponds to the view of a distinguished justice of the Supreme Court and writer on many economic matters, Mr. Justice Holmes. In one of those rare statements in his Collected Legal Papers he discussed that very question and said:

The real problem is not who owns, but who consumes, the annual product. The identification of these two very different questions is the source of many fallacies and misleads many workmen. The real evil of \$50,000 balls and other manifestations of private splendor is that they tend to confirm this confusion in the minds of the ignorant by an appeal to their imagination, and make them think that the Vanderbilts and Rockefellers swallow their incomes like Cleopatra's dissolved pearl. The same conception is at the bottom of Henry George's Progress and Poverty. He thinks he has finished the discussion when he shows the tendency of wealth to be owned by the landlords. He does not consider what the landlords do with it.

I conceive that economically it does not matter whether you call Rockefeller or the United States owner of all the wheat in the United States, if that wheat is annually consumed by the body of the people; except that Rockefeller, under the illusion of self-seeking or in the conscious pursuit of power, will be likely to bring to bear a more poignant scrutiny of the future in order to get a greater return for the next year.

If then, as I believe, the ability of the ablest men under the present regime is directed to getting the largest markets and the largest returns, such ability is directed to the economically desirable end.

It follows from what I have said that the objections to unlimited private ownership are sentimental or political, not economic. Of course, as the size of a private fortune increases, the interest of the public in the administration of it increases. If a man owned one-half of the wheat in the country and announced his intention to burn it, such abuse of ownership would not be permitted. The crowd would kill him sooner than stand for it.

But it seems to me that if every desirable object was in the hands of a monopolist, intent on getting all he could for it (subject to the limitation that it must be consumed, and that it might not be wantonly destroyed, as, of course, it would not be), the value of the several objects would be settled by the intensity of the desires for them respectively, and they would be consumed by those who were able to get them and that would be the ideal result.

I think that is very interesting coming from one who seriously considered the issue raised here.

Senator AUSTIN. We have had some witnesses who have attacked bigness alone, without regard to other factors. It had occurred to

me, and I think to every member of this committee, that before we condemn bigness we ought to study the relation of bigness to other factors.

Mr. EMERY. You could not have built the Panama Canal with a hand shovel.

Senator O'MAHONEY. I think it must be recognized by every observer that in our modern life it has become necessary to find a means whereby the collective resources of the people may be used for their benefit, and the corporation has undoubtedly been one of the most successful instrumentalities for that purpose. The question of whether a corporation as such is good or bad is not before us. Neither is the question of size before us. The question is whether or not Congress shall take any further action to do what I understood you to say you have always contended should be done—to prevent the violation of the antitrust laws. There is a very substantial body of opinion in the country, based upon experience, to the effect that restraint of trade continues despite the antitrust laws; that certain leaders of business and certain corporations use the corporate device, not alone for the purpose of efficiently promoting production, but for the purpose of restraining competitors by unfair methods from exercising their right to produce. That has been called to your attention, of course?

Mr. EMERY. Certainly.

Senator O'MAHONEY. If I understood your statement correctly, the National Association of Manufacturers has always desired to be helpful in the enforcement of the antitrust laws in these respects. Of course, we necessarily find some difference of opinion in the popular mind as to what monopoly is; but I do not think there is a substantial disagreement about the meaning of monopolies among members of the legislative body. We all recognize that there are natural monopolies; that there are monopolies granted by law for beneficial purposes. We must all realize that monopoly is sometimes good, upon the basis of efficient service and nothing else. Nobody complains about that. Certainly I do not complain about the expansion of business, so long as it is a proper exercise of human ingenuity. But I think the condition in which the country finds itself certainly must awaken in the mind of every group the thought that we must find some way to prevent these abuses, which in the minds of a great number of our citizens has been the cause of a very serious condition which confronts us.

Mr. EMERY. They may have contributed to it. Many factors contributed to it. I do not think we can attribute that situation to any one thing. Let me call attention to the fact that the statutes against crime have increased in number, the penalties for crime have multiplied enormously, but crime continues to increase.

I have no doubt that in our economic growth violations of the antitrust laws have increased in number. I think what we need, and I know what many say we need, is intelligent and efficient enforcement of the antitrust laws. There is a request for improvement in their administration, and I think an investigation by a joint committee of Congress into the whole subject of antitrust legislation would be a valuable and helpful thing. Then such inquiry would develop much experience and many views. We have not had such an inquiry since 1911, when Senator Cummins with the very able Interstate Commerce Com-

mittee made an investigation that extended over 2 years and published a most valuable report and made recommendations which I think would have been most helpful, if they had been accepted. But nothing grew out of that until the enactment of the Federal Trade Commission Act and the Clayton Act 4 years later.

Senator O'MAHONEY. We all recognize that it is a very serious problem.

Mr. EMERY. I think it is a serious problem of enforcement, which I do not think is effectively executed. The witness from the Federal Trade Commission who appeared before you commented upon that very fact. We have had a lot of discussion and debate, particularly from those charged with their enforcement, without action on their part to effectively enforce them.

Senator O'MAHONEY. As I pointed out yesterday, it is a very difficult thing to effectively enforce the antitrust laws when you proceed after the offense has been committed.

Mr. EMERY. You had a very recent example of that.

Senator O'MAHONEY. Yes; very unusual.

Mr. EMERY. You had a tremendous record of enforcement when you had the capacity to do the job.

I would like to close by saying I hope you realize the serious effect on the business world at this time of promoting a reorganization of the corporate business structure as a condition of further engaging in commerce.

I should like to submit for your record a few excerpts from decisions of the Supreme Court of the United States bearing upon the questions that have been discussed here. They are very brief.

Senator O'MAHONEY. They may be incorporated in the record.

(The document referred to is here set forth in full, as follows:)

The first case to come before the Supreme Court in which that learned Court even attempted to interpret the commerce clause of the Constitution was *Gibbon v. Ogden* (9 Wheat. 1), in which Chief Justice Marshall defined commerce as "traffic and intercourse," and further said that the clause did not comprehend that commerce which is completely internal and carried on between man and man in a State, or between different parts of the same State and which does not extend to or affect other States.

In *Coe v. Errol* (116 U. S. 517), the Court said:

"There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination. * * * Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of the property of that State, subject to its jurisdiction, * * *."

In *Kidd v. Pearson* (128 U. S. 1) the Court held that manufacturing is not interstate commerce and said:

"If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? * * * The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management. * * * Any movement toward the establishment of rules of production in this vast country, with its many

different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities, in it, if not of every one of them. * * *

In *Delaware, Lackawanna & Western R. R. Co. v. Yurkonis* (238 U. S. 439) the Court said:

"The mere fact that the coal might be or was intended to be used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce. The injury happening when plaintiff was preparing to mine the coal was not an injury happening in interstate commerce, and the defendant was not then carrying on interstate commerce. * * *

In *Hammer v. Dagenhart* (247 U. S. 251) the Court said:

"The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterward shipped or used in interstate commerce, make their production a part thereof. * * *

"When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State' (Mr. Justice Jackson in *In re Green*, 52 Federal Reporter 113). This principle has been recognized often in this court (*Coe v. Errol*, 116 U. S. 517; *Bacon v. Illinois*, 227 U. S. 504, and cases cited). If it were otherwise, all manufacture intended for interstate shipment would be brought under Federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States (*Kidd v. Pearson*, 128 U. S. 1, 21)."

In *Crescent Cotton Oil Co. v. Miss.* (257 U. S. 129) the Court held that the ginning of cotton was not interstate commerce.

In *Heisler v. Thomas Colliery Co.* (260 U. S. 245) the Court said:

"If the possibility, or, indeed, certainty of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production.

"However, we need not proceed further in speculation and argument. Ingenuity and imagination have been exercised heretofore upon a like contention. There is temptation to it in the relation of the States to the Federal Government, being yet superior to the States in instances, or rather, having spheres of action exclusive of them."

In *Oliver Iron Mining Co. v. Lord* (262 U. S. 172) the Court said:

"Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation."

In *Utah Power & Light Co. v. Pfof* (286 U. S. 165) the Court said:

"Without regard to the apparent continuity of the movement, appellant, in effect, is engaged in two activities, not in one only. So far as it produces electrical energy in Idaho, its business is purely intrastate, subject to State taxation and control. In transmitting the product across the State line into Utah, appellant is engaged in interstate commerce, and State legislation in respect thereof is subject to the paramount authority of the commerce clause of the Federal Constitution. * * *

In *Chassanoil v. City of Greenwood* (291 U. S. 584) the Court, speaking through Mr. Justice Brandies, said:

"Ginning cotton, transporting it to Greenwood, and warehousing, buying, and compressing it there, are each, like the growth of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

In numerous other decisions the Supreme Court has held that a transaction strictly between citizens of the same State, not involving the clear intent to interfere with or burden interstate commerce is not within the regulation of Congress under the commerce clause.

One of the early cases decided by the Supreme Court was *Veazie v. Moor* (55 U. S. 507, 573), and the Court, in discussing the history and purpose of the commerce clause, said:

"The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a policy and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community. Nor can it be properly concluded, that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase 'foreign commerce,' or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this, would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the merchant, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may not become the subject of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several States, toward an ultimate destination, like the one above mentioned. Such a pretension would effectually prevent or paralyze every effort at internal improvement by the several States; for it cannot be supposed, that the States would exhaust their capital and their credit in the construction of turnpikes, canals, and railroads, the remuneration derivable from which, and all control over which, might be immediately wrested from them, because such public works would be facilities for a commerce which, whilst availing itself of those facilities, was unquestionably internal, although immediately or ultimately it might become foreign.

"The rule here given with respect to the regulation of foreign commerce, equally excludes from the regulation of commerce between States and the Indian tribes the control over turnpikes, canals, or railroads, or the clearing and deepening of watercourses exclusively within the States, or the management of the transportation upon and by means of such improvements. In truth, the power vested in Congress by article first, section 8, of the Constitution, was not designed to operate upon matters like those embraced in the statute of the State of Maine, and which are essentially local in their nature and extent. The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions, which local jealousies or local and partial interests might be disposed to introduce and maintain. These were the views pressed upon the public attention by the advocates for the adoption of the Constitution, and in accordance therewith have been the expositions of this instrument propounded by this court, in decisions quoted by counsel on either side of this cause, though differently applied by them."

The same Court in *U. S. v. Dewitt* (70 U. S. 41), in discussing the commerce clause, said:

"But this express grant of power to regulate commerce among the States has always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States; except, indeed, as a necessary and proper means for carrying into execution some other power expressly granted or vested."

In the *Trade-Mark Cases* (100 U. S., 82, 96) the Court said:

"When, therefore, Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations, or among the several States, or with the Indian tribes. If not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce to all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress."

Senator O'MAHONEY. The committee will stand in recess until 3 o'clock this afternoon.

(Whereupon, at 12:30 p. m., a recess was taken until 3 p. m.)

AFTER RECESS

At the expiration of the recess the hearing was resumed, as follows:

STATEMENT OF WILLIAM B. HARRISON, LOUISVILLE, KY.

Senator O'MAHONEY. You may proceed, Mr. Harrison. First give your name and residence, and whom you represent.

Mr. HARRISON. My name is William B. Harrison, Louisville, Ky. I represent the Louisville Industrial Foundation, a Kentucky corporation, to which I shall refer in a moment. Also the Mangler Co., of Louisville, with other plants throughout the United States. Also B. L. Avery & Sons Co., with principal offices and plant in Louisville. I happen to be president of the first-named corporation, a member and chairman of the executive committee of the second, and a director of the third.

The Louisville Industrial Foundation had its capital stock subscribed about 21 or 22 years ago through popular subscription. It is a nonprofit organization, designed to assist small industries to expand, and to encourage them to move in the industrial area around Louisville. In pursuance of that policy we have about half a million dollars invested in a dozen small industries, ranging anywhere from \$15,000 to about \$100,000 as the highest. As I have said, the organization is a nonprofit organization.

I have tried to come here in the capacity of a layman, certainly not an expert, to try to give the committee the layman's viewpoint of this bill as it strikes us, without any great statistical preparation. I can say that those with whom I have discussed the bill are lay people, and their attitude is one of puzzlement and confusion. I do not think they realize what the bill is all about, and they are not certain where the bill is going to lead them.

In the first place, if the bill is designed to control or direct itself against so-called big business, it certainly has overshot the mark in that respect. Gross assets of \$100,000 in a corporate set-up, particularly a manufacturing set-up, is a very small layout. It probably would employ from 25 to 50 men and do a volume of business of perhaps around \$150,000 a year. The words "gross assets" are used, and I assume that means gross assets instead of net corporate assets. All of the dozen small companies that our concern is in have gross assets, and have had for the past 3 years, in excess of \$100,000.

The bill indicates that where a corporation not under the terms of the bill is interfering disadvantageously with the business of a licensed corporation, then it may be brought into the licensing picture, but we have nothing to indicate whether that interfering corporations shall be a \$100,000 corporation or not, leading us to feel that perhaps that is indicative of some future effort to bring into the bill corporations not engaged in interstate commerce. Perhaps that is not so intended. If it is not, I think it should be clarified.

If the bill is designed to be a protection to stockholders it certainly works both ways, because the implications and possibilities in the denial of a license as provided in section 4, and in the action to revoke a license as provided in section 8, and the feature of restitution provided in section 9, are all beyond the immediate control of the stockholders, and tend to destroy the corporation and, of course, destroy the interests of the stockholders.

The severe individual penalties provided for in the bill came with a considerable shock to those who read them. The provision for a penalty of a percentage of the capital, of course, falls on the stockholders themselves. That is provided for in section 18. It must be remembered that capital is not in cash. Capital is in plants and buildings and equipment and inventories and accounts receivable. In fact, some good operators keep as little cash on hand as possible, preferring to revolve it in the business. A severe penalty of that nature could wreck a company.

If the bill is designed to give a greater voice in the control of the company's affairs to stockholders, it endeavors to do that in one respect by providing for a vote of the stockholders before any profit sharing or bonus plans are adopted for executives or directors. It does not give the stockholders any voice in any other type of bonus offered to other employees, which runs into very large sums of money in many instances. The stockholders, of course, are completely deprived of a voice in respect to the application of a license, and also in the future congressional limit set upon the charter. That is left to the board of directors.

If the bill is designed to protect labor, it seems to the layman that the Wagner Act is in effect and was set up for that purpose. If it is designed as a protection for future investors, it would seem to the layman that the Securities and Exchange Commission has been set up for that purpose.

There is a provision in the bill, if I read it correctly, in section 5 (d), that provides that nonvoting stock shall be automatically, upon being licensed, permitted to vote. That would work out in a very serious way in many instances. I know of one concern in which we are interested where there is twice as much preferred stock outstanding as common. The preferred does not have a vote, which is quite customary where preferred stock is owned. If the preferred stock should be given a vote under this law, it is readily conceivable that the interest of the preferred stockholders would become paramount to them, and they would see to it that all profits and revenues of the company for the protection of the future dividends of the common-stock holders would be completely submerged in the demands of the preferred-stock holders.

There is a provision for the voting of corporation-owned stock by the stockholders of the owned corporation, if I read it correctly. I do not see any great harm in that, but it is almost impossible to carry it out. I am sure you are familiar with the great difficulty of getting proxies of stockholders at stockholders' meetings, particularly in those companies whose stock is widely scattered. It is quite an effort to get a quorum to send in proxies. If your company owns stock in a corporation whose annual meeting date, as frequently will be the case, is a different date from the annual meeting date of your company, it means sending out to your stockholders other proxies in an effort to get the votes of the stock owned by your company.

There is a provision in the bill eliminating the right of corporations to own or hold the stock of other corporations, except under specific conditions named in the bill. I would like to call attention to the fact that a great many corporations are unwilling owners of stock in other companies, because of reorganization proceedings. It is simply for the protection of the debt that they are compromising that they

do it. That provision, unless modified in some respect, would prohibit corporation X from participating in a 77B proceeding to acquire the preferred stock in lieu of the debt, so as to enable the company which is endeavoring to reorganize to continue in business.

There is a provision in the bill which prohibits a director or officer of the company or corporation who has loaned money to another corporation from holding a directorship or official position in the other corporation. That is right down my alley. Our business is to assist small industries to expand, and by so doing we loan them money. It is a hazardous operation, to say the least. Small business loans are extremely hazardous, and we find that it is essential that we protect our funds by having a constant and intimate look at the activities of the corporation in which we are an investor, and we require in most instances that we be given a place upon the board. This bill would destroy our protection in that respect.

It may be said that you can get somebody else to represent you who is not an officer or director of your corporation, but my observation in very recent years is that it is almost impossible to get anybody to serve as a director of a corporation, unless he has a direct interest in it, because of the hazards that have grown up in connection with directorships.

There is a provision for certified proxies, which to the layman contains all kinds of implications. I see in it a possible constant source of stockholder irritation and constant hampering of the operations of a well-run company. There is no provision for the compensation of that certified proxy. I do not know what the bill intends in that respect, whether the stockholder will pay him, whether the company will pay him, or whether the Federal Trade Commission will pay him, or whether he shall be paid at all. It seems to me that question of a certified proxy has plenty of potentialities of trouble.

I would like to refer to the provision in section 3 (b).

Senator AUSTIN. Before you leave the other subject will you permit a question?

Mr. HARRISON. Yes.

Senator AUSTIN. By the language of the bill, where or in what department do you understand that attorney would have the right to represent the corporation?

Mr. HARRISON. As I read the bill, he is upon application by himself, provided he possesses certain qualifications, issued a certificate by the Federal Trade Commission as a certified proxy, and that any stockholder may nominate him as their proxy.

Senator AUSTIN. That is not the thing to which I referred. I refer to what appears in another paragraph, on page 26, section 20.

Mr. HARRISON. Yes. I was in error there. It was the Civil Service Commission and not the Federal Trade Commission.

Senator AUSTIN. Yes; but that is not the point, either. That provides there shall issue to him a certificate upon application, if qualified as outlined in the act, as a certified corporation representative for the purposes of this act. Is not that unlimited in its scope? In other words, when we get down to the practical use of that institution, can any duly authorized attorney at law represent a licensee in any department of the Government?

Mr. HARRISON. If he is qualified to practice before that particular department.

Senator AUSTIN. Can he do so if he does not have a certificate under the Civil Service Commission?

Mr. HARRISON. I do not think I catch your question.

Senator O'MAHONEY. Senator Austin is apparently under some doubt, let me say, as to whether or not that language sets up an exclusive power in the corporation representative.

Senator AUSTIN. That is right.

Senator O'MAHONEY. I do not think it does.

Mr. HARRISON. I read it in connection with 5 (j).

Senator O'MAHONEY. That the owner of the stock has complete authority to grant or withhold his proxy?

Mr. HARRISON. Yes.

Senator AUSTIN. That is not my question. My question relates to the practice of law in the courts or in the departments of Government. I claim that section 20 permits the interpretation that when those persons are attorneys in fact and have been issued certificates by the Civil Service Commission, they are authorized to represent these licensees in the departments or other places.

Senator O'MAHONEY. On what do you base that?

Senator AUSTIN. On this language: "authorizing such persons to act as corporation representatives."

Mr. HARRIS. If that was changed to "proxy" it would be cleared up.

Senator AUSTIN. It might be somewhat better.

Senator O'MAHONEY. Isn't that governed by paragraph (g) in section 13 [reading]:

Such corporation representative shall be entitled to all the rights and privileges of any stockholder whose proxy he may hold, and to participate in the transaction of business at any meeting of the stockholders or board of directors in which said stockholder might himself participate.

Senator AUSTIN. No. The two sections are not inconsistent. It is obvious to me that the chairman does not intend that.

Senator O'MAHONEY. Oh, no.

Senator AUSTIN. And it can be readily remedied.

Senator O'MAHONEY. The witness was calling attention to the fact that there has been a growing difficulty in some corporations in obtaining stockholder representation. We all know that small stockholders frequently throw their proxies in the waste baskets, with the result that it is sometimes very difficult to obtain a quorum at a stockholders' meeting. The only purpose of that section was to provide a method whereby the stockholders would have a proxy, certified after examination by the Civil Service Commission, on whom they might have relied. It is an attempt to set up a sort of professional class like certified public accountants. It may not be a wise thing to do, but that was the only purpose of it.

Mr. HARRISON. My reference to the difficulty of obtaining a quorum at stockholders' meetings was in connection with the provision that corporation-owned stock under this bill must be voted by the stockholders and not by the corporation board of directors, as I understand the bill. That would practically paralyze the ability of the corporation to vote.

Senator AUSTIN. Where is that? I have not seen that.

Mr. HARRISON. That is in section 5 (f). I think I have the wrong reference.

Senator O'MAHONEY. There is nothing in section 5 (f) that covers that.

Mr. HARRISON. No; that is right. Perhaps that was in the previous bill. Was it in the previous bill?

Senator O'MAHONEY. Not to my knowledge, if I understand you correctly.

Mr. HARRISON. I either quoted the wrong section or I have misread a section with respect to that.

Senator AUSTIN. Subsection (f) prohibits the holding of stock in another corporation, unless it held it on or before the date of the enactment of this act, or unless such other corporation is a subsidiary of the licensee.

Mr. HARRISON. Yes. I remarked on that particular feature a few minutes ago in connection with the settlement of indebtedness, in which corporations are frequently called upon to accept stock.

I was going to call attention to the data required in section 3 (b) to accompany the application for a license. I have no means of estimating how many companies of various kinds will be subject to licensing, but those who have had any experience with the data required by the Securities and Exchange Commission know the terrific expense to which a corporation is put in order to comply, particularly in its auditing and legal and printing expense, and I venture to say there are not enough accountants in the country to take care of a proper preparation of the data asked for in section 3 (b), certainly within a reasonable length of time. I do not know just what form this preparation will take, but if it is anything like the form required by the Securities and Exchange Commission the expense will run into millions of dollars. I have had two occasions to help prepare applications before the Securities and Exchange Commission, and I know the expense is terrific.

Senator AUSTIN. My attention has been called to section 5 (g) on page 12, containing this provision:

That no other corporation or association shall be entitled to any such vote or voice, directly or indirectly, at any meeting of the stockholders, except that the stockholders of any such other corporation or association shall be entitled to cast their pro rata share of the stockholding of such other corporation.

Is that the provision to which you refer?

Mr. HARRISON. That is the provision to which I referred. That is the same provision that requires that all stock shall be voted. That would create a perfectly impossible situation.

There is a requirement in section 5 (e) that any company or corporation, as defined in the act, which is formed after the effective date of the act, shall have its general office and the place of meeting in the State of incorporation. That may be well intended, but what it seems to me to do is to penalize certain corporations in favor of those corporations which have procured their charters from States with more elastic and perhaps liberal charter laws. I do not think there is anything wrong with a corporation doing business in Missouri and incorporating in New Jersey. I think New Jersey has an excellent corporation law. There are always local reasons why that is done. In Kentucky, for example, we do not have the right to issue non-par stock.

Senator LOGAN. That is right.

Mr. HARRISON. That drove many corporations into other States. Assuming that similar conditions would exist after the passage of this act, it would be impossible for a corporation having a plant and equipment and business and officers and personnel in Kansas to take advantage of the favorable provisions of another State, which are perfectly legitimate, in order to improve its situation. Consequently, it is handicapped in its future operations by this provision in that respect. I recall a good many instances of that kind in Kentucky because of our legal interest rate.

Senator LOGAN. That is all true.

Mr. HARRISON. If you sell notes or bonds for cash, which is necessary to do to take care of finance charges, it is impossible to charge a going rate of interest.

The layman sees in this bill many things which would cause innumerable conflicts. There is going to be a conflict with the State authorities because the Federal license seeks to impose conditions upon a State charter that the State has not imposed. There is going to be a conflict with the Federal authorities with reference to the Labor Relations Board, because at least three paragraphs of the qualifying clauses are definitely related to labor.

Incidentally, let me cite an example of what the labor clause, with reference to working persons under 18 and over 16 between 7 o'clock in the morning and 7 o'clock in the evening, will do. One of our local business houses, a large manufacturing company with a large wholesale warehouse, is doing a very substantial business throughout the South. In order to get their operations under way each day they have to arrange to pick up the mail at 6 o'clock in the morning. The mail clerks are boys just out of high school. Many of them are taking a course in a local university, 16 or 17 years old. They pick up that mail at 6 o'clock in the morning, thereby enabling the firm to get under way at 8 o'clock when the offices are opened. That is an unnecessary hardship on this organization in order to meet some conditions which exist perhaps miles away.

Because the Federal Trade Commission is given the right to specify the method of accounting, there is also the possibility that there will be a strong conflict between the method of accounting required by the Federal Trade Commission and the method of accounting required by the Securities and Exchange Commission. They both may have different viewpoints as to what they want and how they want it. That would impose an awful burden upon the already overloaded accounting staff of the business world.

There is a possibility of conflict between the qualifying clause of paragraph (b) and possible future child labor legislation. That is a hazard, and we do not know when such legislation will come to pass.

Just to summarize, Mr. Chairman, some of these specific aspects of the thing as applied to the operation of business, it seems to me this bill comes at a peculiarly unfortunate time, when there is plenty of doubt and confusion and detailed work going on in the business world. The various laws passed in the past few years have entailed a perfectly shocking amount of accounting, which is an extremely heavy burden upon business, particularly upon small business concerns. This is just adding more restrictions and additional expenses and sources of irritation to business. When business is puzzled, when it is confused

as it is now, when it is fearful, nothing could be more in the nature of an added obstacle of recovery than to bring out a bill of this kind.

I have just one further comment to make and then I am through. I have read the brief printed pamphlet in which was contained the original discussion of a similar bill, known as S. 10, a year ago last January. I was particularly struck with the background of the witnesses who appeared at that time as proponents, I take it, of the legislation. I was particularly struck, because I could not find anybody who had any experience in operating a business. I know that is a routine criticism which has been made so often that it has become threadbare, but nevertheless it is true. I would like to go over them very briefly. I shall not call their names.

No. 1 was for 20 years a writer of special articles on economic subjects in a popular weekly magazine. He had no commercial experience whatever. I have no criticism of these gentlemen in their specific lines. Many of them were very able in those lines, but they spoke as economists and advisers and not as operators of business.

No. 2 was a professor of constitutional law in a prominent eastern university, who had no industrial or commercial experience.

No. 3 was a professor of American history. He is now retired. He was also the author of several books on government, politics, and economics.

No. 4 was general counsel for a national labor organization, and a former corporation lawyer, with no industrial or commercial background.

No. 5 was the head of a national labor organization. He had worked as a laborer, but never had, to the best of my knowledge, any experience in the direction of corporate or business affairs.

No. 6 for 15 years was a livestock inspector in the Bureau of Agricultural Economics. Naturally the same comment applies to him.

No. 7 for 15 years was economic adviser in the Department of Agriculture, formerly operated a small farm, and was also engaged in the Census Bureau. The same comment applies to him.

No. 8 for 10 years was connected with the Department of Agriculture, and the Agricultural Adjustment Administration. For 2 years he was a teacher and research man in a prominent northwestern university. The same comment applies to him.

No. 9 was the only one I could find with any commercial experience. For 15 years he had been on the staff of the Federal Trade Commission. Prior to that he had held some six positions, about two of which were commercial positions.

No. 10 was an attorney and special agent for the Federal Trade Commission and its predecessor, the Bureau of Corporations. The same comment applies to him.

No. 11 for 38 years was a distinguished professor of economics in a prominent eastern university. He has done some special work on Government assignments, and at one time was a director and member of the executive committee of a large midwestern railroad, now in receivership.

No. 12 for 35 years was a practicing attorney, specializing in municipal financing. The same comment applies to him.

No. 13 was for 20 years an executor and trustee of estates. The same comment applies to him.

No. 14 was for 5 years engaged in the sole occupation of attending stockholders' meetings.

If that is the background upon which the bill has been built up, it strikes me that it is not out of the way to suggest that you require to come before your committee, men who have had at least some of the practical background of managing a business.

That is all I have, Mr. Chairman.

Senator O'MAHONEY. Are there any questions?

Senator LOGAN. I believe not.

Senator AUSTIN. No questions.

Senator O'MAHONEY. Thank you very much.

**STATEMENT OF FREDERICK S. KELLOGG, JERSEY CITY, N. J.,
REPRESENTING THE MANUFACTURERS' ASSOCIATION OF NEW
JERSEY**

Senator O'MAHONEY. You may proceed, Mr. Kellogg, by first stating your name and whom you represent.

Mr. KELLOGG. My name is Frederick S. Kellogg. I come from New Jersey. I am a lawyer engaged in the general practice of the law. My office is at No. 1 Exchange Place, Jersey City. I was born at Montclair, N. J., and still reside there.

I come here to speak in behalf of the Manufacturers' Association of New Jersey, which is a nonprofit organization incorporated under the nonprofit law of the State of New Jersey. It is not a trade association in the sense that the term is commonly used. It is not a trade association in the sense that it represents a particular trade or industry or group of trades or industries. It represents any kind of a productive organization. It has among its membership concerns engaged in the construction of buildings. It does not have among its membership commercial organizations. In other words, its membership and its make-up is distinctly in the production industry, and it is from the production end rather than the promoting and selling end that the members individually approach these problems.

Now, the organization was formed in 1909, and it so happens that in behalf of a producing organization I attended the second of the preliminary organization meetings and have been in touch with it ever since. Since about 1913 I have been acting as counsel for it.

I think, in view of the last part of the testimony of the last witness, I should say that, in addition to being an attorney, I have had some practical experience in business. I have been a director in several small manufacturing concerns, and I still am. I was unfortunate enough in 1929 and 1930 to be the treasurer of a small manufacturing concern. There has been a good deal said about those who never had to raise a pay roll. Well, I did, to the extent of sinking about \$2,000 of my own money, which I never got back. I have been in direct contact with the production industry, and I think that to a degree, at least, I know their problems.

Now, on March 1 of this year the membership of this manufacturers' association was 4,527 manufacturers. The statistics of the New Jersey State Labor Department, which I got before I came here, indicate that there are about 10,500 concerns in New Jersey listed as manufacturers. Of the membership of the manufacturers' association 726,

according to the records, employ 25 employees or more, and the balance of 3,801 employ 24 or less employees, so that I think the organization represents what is commonly called the little fellow and not the big fellow. We have a few members who are large employers. We have numerous members who are comparatively small employers. It is from the point of view of the small employer, the small individual production unit, that I want to speak here.

Now, while I am a lawyer and while I am not going to discuss any legal questions, I hope to speak principally from what I understand to be the practical point of view, both of the membership of this association and the layman not actually engaged in the production business, as they have expressed their views from time to time, as to the things that seem to me to be fundamental in this situation.

I may say now that one of the fundamental objections that the people I represent have to this bill is that it attempts to reach over, in their judgment, at least, out of commerce into production, and attempts to tell them how and under what conditions and in what way they shall produce goods. They do not think that is a proper thing for the Federal Government to do. In 1935, at the convention which they hold annually, they passed a resolution which deals with the things that were uppermost in their minds at that time, and I am going to read it:

Be it resolved by the Manufacturers' Association of New Jersey, in convention assembled, That it favors and demands an early and complete withdrawal by the Federal Government and its agencies from every phase of intervention, regulation, or control in the field of industrial production and employment relations therein. Neither production nor employment relations therein constitute commerce within the constitutional jurisdiction or control of the Federal Government. Control or regulation of such matters, insofar as control or regulation should be exercised, is a matter for the State government and not for the Federal Government. Local matters cannot be properly or effectively regulated from a central point in a nation as large as ours. Therefore, this association favors and demands, as the most constructive contribution towards recovery which can be made at this time, that the Congress allow title I of the National Industrial Recovery Act, as now in force and administered, to expire on June 16, next, and that the Congress refrain from interfering with production and the relation of employer and employee therein by means of old-age pensions, unemployment insurance, labor disputes bills or in any other manner. This association urges an honest observance of constitutional limitations on the powers of the Federal Government not alone because those limitations are contained in the Constitution but fundamentally because those limitations are inherently best for the Government of this Nation.

In 1936 there was a somewhat similar matter before them, and they passed this resolution:

Be it resolved by the Manufacturers' Association of New Jersey in convention assembled, That it again demands an early and complete withdrawal by the Federal Government and its agencies from every phase of interference, regulation, or control in the field of industrial production and employment relations therein. Neither production nor employment relations therein are within the constitutional power of the Federal Government; such matters, insofar as control or regulation should be exercised, are for the State government. We say again that local matters cannot be properly or effectively regulated by centralized authority in a Nation as large as ours. This association continues to urge an honest observance of constitutional limitations on the powers of the Federal Government not alone because those limitations are contained in the Constitution but fundamentally because those limitations are inherently best for the people of the United States. The people of this State including employers and employees cannot devote their attentions and energies to increasing the volume of production and thereby reducing unemployment and producing recovery so long as the Federal Government continues to intermeddle with matters not within its power.

That is the first section of that resolution. In 1937 they passed a similar resolution, which also dealt with other matters. That is their fundamental attitude and approach toward these things. I think that fairly represents the attitude of the people of the State of New Jersey.

I will read now a message from Hon. A. Harry Moore, the present Governor of New Jersey, to the legislature of that State:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
February 28, 1938.

To the Legislature:

I desire to call your attention to two bills pending in the Congress of the United States which seem to infringe upon the rights of the State of New Jersey to an extent which, it seems to me, would justify the legislature in calling these matters to the attention of the Senators and Representatives from this State.

The first is S. 3255, a bill to amend the Securities Exchange Commission statute by giving that Commission power which it does not now have in regulating transactions in bonds of States or political subdivisions thereof. Even though this bill does not attempt directly to regulate the issue of such bonds, which would be clearly invalid, yet any Federal regulation of subsequent transactions in such bonds would interfere with the free market for them and would thereby, to an appreciable extent, adversely affect the issuing price, and would particularly interfere with municipal refunding operations.

The other bill is the Federal Licensing Bill, S. 3072, which would require all corporations to secure a Federal license before they could engage in interstate commerce, and, as a condition of procuring such Federal license, impose regulations affecting the action of the corporation in matters that are not interstate, and are, therefore, not within the power of Congress to regulate.

Both of these bills, in the respects above mentioned, represent an unjustifiable intrusion of Federal authority in matters of strictly State concern, and should be opposed by the State Government if we are to retain as a feature of our Constitution the sovereignty of the States in their local spheres.

I, therefore, recommend that you call the attention of the Senators and Representatives from New Jersey to this matter, by passing immediately a joint resolution embodying your opinion.

Respectfully submitted.

A. HARRY MOORE, *Governor.*

On the same day there was introduced in the legislature a joint resolution, following the reading of the message of the Governor just referred to. The material part of that resolution is as follows:

The legislature of the State of New Jersey considers the provisions of the bill known as S. 3072, which would require all corporations to secure a Federal license before such corporation could engage in interstate commerce, and which imposes on such corporations, as a condition of procuring such Federal license, regulations affecting the action of the corporation in matters that are not interstate, to be an unwarranted and unjustified intrusion upon the powers reserved by the Constitution of the United States to the States and to the people, and said provisions represent an unwarranted interference with the right of the State to determine the action of corporations within its borders in all matters that are not interstate and do not directly affect interstate commerce; and the legislature urges the Senators and members of the House of Representatives from New Jersey to demand that these provisions be eliminated from the bill.

Resolved, That a copy of this resolution duly authenticated by the president of the senate and attested to by the secretary of the senate be sent to each United States Senator and Member of Congress from New Jersey.

Senator O'MAHONEY. Was that resolution adopted?

Mr. KELLOGG. That was unanimously adopted by both houses as a concurrent resolution. The Governor is a Democrat. The majority of both houses are Republicans. There was not a dissenting vote, and I am informed there was only one absent from the senate and three from the house at the time. So it was the unanimous action of the

executive and legislative departments of the State of New Jersey in respect of this particular bill.

In the course of the discussion here today reference was made to a case where certain building and loan associations were invited to come over and be incorporated as Federal building and loan associations to which the State objected, and the Supreme Court of the United States said the State had a right to object to the action of the Federal Government.

Then there is another matter that had not occurred to me, or I would have had the citation ready. Mr. Justice Cardozo, in commenting on the Labor Relations Board Act, pointed out that no State was objecting to the action taken. Whether he had in mind his previous opinion in the other case, I do not know. Whether he had in mind that, if a State was going to object, the right of the State to protect its own sovereignty would be recognized by the Supreme Court, while the right of a private citizen to turn around and attempt to protect the sovereignty of the State, which had not asked for such protection, might not be recognized, I do not know.

There is the background of the situation. The Manufacturers' Association approaches this from a practical point of view. They say they believe it is unconstitutional, but the fundamental thing is that it will not work. It cannot work. That is their attitude. The legislature said so last Friday morning, referring to this specific act.

That brings me to a consideration of the particular bill before you. I was fortunate enough to be here this morning and hear Mr. Emery's presentation, and to hear the presentation of the last witness, and I do not desire to cover the specific ground that they covered. However, there is one thing that neither of them referred to that has me puzzled. That is section 5, subdivision (i), which provides:

That the stock of the licensee shall be fully paid, or payable in cash or in property or in services where the issuance of such stock or such property or services has been authorized upon application to a competent court and under its order finding upon competent and specific proof that such stock has been or is to be issued on a fair valuation of such property or services.

I know of no State court in New Jersey which would entertain such an application.

Senator AUSTIN. That is not within the definition of judicial power in the Federal Constitution, is it?

Mr. KELLOGG. No; and I do not think it is within the judicial power of the courts of the States, as defined in the State constitutions. The courts are not there to answer questions because somebody wants them answered. They are there to decide disputes which have actually taken place. Therefore, if this bill passes, I do not see how anybody in the State of New Jersey, if they were obliged to resort to the State courts, can ever comply with this subdivision (i) of section 5. There is no machinery by which they could do it, if they wanted to.

The people for whom I am speaking feel that there is an inherent difference between trading in articles already produced and the production of those articles. Not only that, but I have observed time and again a great difference in point of view within a single corporation, where you would have a serious dispute between the service department and business-getting department on the one hand and the production department on the other. I have never seen a corporation

that was alive, unless it was a one-man corporation, which did not have those different points of view.

I might also say that in the operation of our association, the people who are in charge of it produce such things that it is not feasible to weld into one organization people who are traders and commercial people with those who are producers. They have their various methods of operating, and they are entirely different. They do not think about things the same way, and they do not act and react in the same way.

One of the fundamental difficulties our people see in this bill is that, while they recognize fully the power of the Congress to regulate interstate commerce, and recognize fully the power of the Congress, if the Congress sees fit, to exclude every corporation, except a Federal corporation, from operating in interstate commerce, they do not believe the Federal authority and power should reach over and try to put its finger in the middle of the production process. They say that is inherently the difference in their attitude and method and so on. A factory for production stays in one place. It is subject to local conditions. You cannot, from an economic point of view, ignore that. They feel that the law applicable to it should be administered by people familiar with the situation in the particular locality where that production is carried on. They feel very strongly that it is absolutely impossible to operate from a central point and cover the whole United States.

We had an illustration in New Jersey just recently. They passed a bill there awhile ago to provide for the determination of a fair minimum wage. The first industry to be brought under that was the laundry industry. A committee was appointed to consider what would be a fair minimum wage, and then to publish the findings of the committee for the information of employers and employees. There was no penalty at that stage. That was left for further consideration.

Now, they found that they could not determine a fair minimum wage applicable to even so small a territory as the State of New Jersey, and they therefore divided the State into zones and provided that the minimum wage should be so much in counties abutting upon New York City and New York State. Then they moved down to those counties abutting upon Philadelphia, the center of population there, and fixed another minimum wage. Then they went into the counties which had a summer trade and made certain regulations by way of establishing a minimum wage in those counties. Some counties were left out altogether. In some counties they only made regulations for certain parts of the year.

The point I want to bring out to you, and the fundamental thing underlying it, is this: That where you have a fair wage, as they use the phrase, there is an economic question. It is not a question of producing a living wage. A fair wage may be higher than a living wage, or a fair wage may be lower than a living wage. The question of the wage is determined within the limits of the production that is made. In other words, wages can, in the long run, be paid only out of production. Wages are a mechanism of production, and contribute to that production. A man who has contributed capital, buildings, heat, light, is entitled to a share of the production. The man who does the work are also entitled to a share of the production, but you cannot divide more than there is.

Therefore, the people up there contend that it is not a good thing to fix a definite minimum wage for any particular industry which will result in those people taking out of the industry more than it really gets from the sale of its goods and services, it is an uneconomic thing to do. Well, you say, "All right. Nevertheless, they ought to be required to pay that."

Senator O'MAHONEY. Who says that?

Mr. KELLOGG. The people who advocate a flat minimum wage for all industries. Maybe not a flat one, but a minimum wage independent of local conditions. What would happen, as a practical matter, would be this: If that is done under this bill, operating in conjunction with the National Labor Relations Act, you are going to have a situation where you are going to shut up the small manufacturers, and there are plenty of them.

I have heard it said by some people, "Oh, well, they are marginal concerns, and they ought to be shut up." All right. Suppose you disregard the owners. How about the people who are working for them? In other words, is not less than a minimum wage better than none at all, no money? That is what is going to come if we attempt to establish a minimum wage in all industry.

Our people in New Jersey are very much disturbed about this bill and other legislation leading to determination of Federal authority on this question of minimum wages. They were quite encouraged, as a matter of fact, by the action taken under the New Jersey act, where the economics of the situation were given due consideration. They do not want the wages of employees, just employees who are engaged in production, regulated from Washington. They want a place where they can be heard without coming to Washington, and that the people to whom they speak are the people who are going to decide, and will not merely gather information and report back to somebody else to whom they did not speak.

That also applies very definitely to this question of female labor. There is an attempt here to require equal compensation for equal work, but who will determine when the work is equal? There is the practical difficulty. I do not know whether it will be the Federal Trade Commission or not. If the employer says the work is not equal, and the Federal Trade Commission says it is, there you have a practical controversy. They do not like that idea.

The next proposition that bothers them is that question of hours of work mentioned by the last witness. There are situations where it is no hardship to work before 7 o'clock in the morning or after 7 o'clock at night. Our organization does not and never has favored any employment which would be injurious either to a minor or to an adult, where their health might be affected because of working conditions. Nevertheless, when you sit down to formulate rules to cover that situation, you are going to impose a lot of things which are undesirable from every point of view of health and management and so on. This idea that a boy should not be employed because a man might do the job does not work out. If you hire a man to do that job and get the mail at 6 o'clock in the morning, perhaps you have nothing more for him to do.

Senator O'MAHONEY. You do not think of this as a wages and hours bill, do you?

Mr. KELLOGG. It contains a requirement as to what hours the minor shall work.

Senator O'MAHONEY. That is child labor.

Mr. KELLOGG. It is child labor to that extent. It seems to me this might put a competitive concern in an advantageous position in competing with some concern which is licensed under this act.

That brings me to the next proposition, which is the limit of \$100,000. In my judgment, this act would apply to everybody in the picture, I do not care who they are. They may not have gone down to get a license in the first instance, but they are subject to being shut up and exiled from productive industry if they happen to run afoul of any of these provisions. The people for whom I speak do not like that.

They want a local administration of matters which they consider to be local.

I have not heard of any protest against the regulation of interstate commerce by the Congress, nor have I heard of any protest against the enforcement of the antitrust laws, not at any time. The only protest that I have heard was that they are not enforced.

Now, that brings me to another situation, and the first and primary point that I want to make is that, as far as the people I represent are concerned, they do not want any interference by the Federal Government under the guise of assisting interstate commerce. They do not want their productive process or the relations of employer and employee regulated under that kind of a proposition. They want that to be left to the particular State in the particular instance to work out. They think they will get more justice and, what is far more important, they will get more production under that method, because, otherwise, you have no assurance that wages may continue or employment may continue for any material length of time. I know the fundamental difficulties they are having right now. It is my personal opinion, which I do not want to unload on the association, that as wages increase prices are bound to increase. I do not mean in all cases. You will recall the situation we had under the N. R. A. More wages? Yes; for a while they got more, but in real wages they did not get more and they could not, because they have got to come out of production, and the raise of prices reduced the production. The N. R. A., speaking at the behest of Government officials, did result in a raise in prices. If it had not resulted in a raise in prices, there would have been more employment.

So, as I say, one of the fundamental things that our people see in this bill is the matter of production and the matter of relations of employer and employees in production, and they want that to be left within the jurisdiction of the State, where they think from a practical point of view it belongs. They think that corporate matters, insofar as they deal with the function of production within the State of New Jersey, should not be subject to the control of the Federal Government.

It is perfectly true that many of these concerns do sell in interstate commerce. I do not think there is one of them who will deny in anywise the right of the Federal Government to say how they shall sell, what agreements they may make in the course of that sale, or anything of that kind. I do not think any one of them will say for one minute that the Federal Government, under the interstate commerce power, has no right to step in and say to a producer in New Jersey: "You shall give equality of treatment in respect to the selling of your goods to people coming from other States, which would make

the transaction interstate commerce, with the fellow who comes from around the corner." They are not looking for any privilege, if you want to put it that way. All they are looking for is that the matters which are local be governed by the local law, administered by the local people to whom they can go and explain the situation, and who know from being in the neighborhood what the situation is.

Now, as I say, that is one fundamental thing I am bringing to you on an entirely different subject. The next proposition is that it seems that the Federal administration of this act will be done by the Federal Trade Commission. I happened to have been to them for assistance, and have never been refused. They have been most cooperative. But just as soon as you unload that jurisdiction onto the Federal Trade Commission, you are going to prevent it being any good for anything else. The volume of work you are going to put on it is just going to smother it. I do not believe it can possibly function under that load. I believe if you would draw your bill to leave out all of these numerous requirements, you will reduce the work and territory and everything to about 10 percent of what you are going to get if you keep those provisions in, from an administrative point of view.

I want to be perfectly frank with you. What I would advise a client to do, if this bill passes, would be to form a separate corporation to be known as the XYZ Sales Company, to have the original corporate charter amended to include that feature; and have the new corporation apply for a license, and comply in every respect with every interstate matter that you want to impose upon it; but leave the production end of the business in the local corporation subject to local State laws and local regulation as to the administration of its corporate affairs. In other words, one corporation will be a local corporation, recognizing only the power of the Congress to say to such local corporation: "You shall not engage in interstate commerce."

I do not believe that it is a proper thing, from a practical point of view or constitutional point of view, to say to a person: "We have no real right to regulate you in this particular, but if you will submit to regulation in this particular we will give you the privilege of doing something we have a right to forbid you to do." That is a sort of a trading offer.

That was the way in which the bill about Federal purchases worked out. After the N. R. A. went out of existence they passed a bill known as the Walsh-Healey bill, providing that all Government purchasing should be done under certain conditions. I always thought every citizen of the United States stood equal in front of the Federal Government, and if he offered his goods at a reasonable price he should have the transaction worked out on that basis. I could not see what difference it made whether it was made in this State or that State, or what the hours of labor were, or any of the other matters covered in that bill. That never did work out, as I understand it.

You may carry the argument far enough to say, "Interstate commerce is furthered by building operations. Therefore, the Federal Government should put in these various regulations and requirements in respect to all the things that go into any building anywhere in the United States." If that followed, because most building material, at least in the East, comes from some other State, probably you could do it. But the State would have no police power left.

There is just one other thing. We do not think that any matter of production or relation of employer and employee engaged in production should be covered by this bill. We feel that if you unload the burden provided for in this bill on the Federal Trade Commission you are going to absolutely destroy its most useful functions, because it will not be able to carry the load. We also feel that legislation of this kind should not be imposed upon business at this particular time. The people in industry are just about fed up. I do not mean they are recalcitrant, but they are just about discouraged. If it is not one thing, it is another thing. You cannot pick up a paper but somebody is shooting at them. It may be some small concern that has grown up in the community, and is now to be thrown into some basket or other under the tax bill. It may be a question of wages to be administered from the central point. It may be a question that they will have to hire a lawyer and have the old corporate structure reorganized in order to meet the licensing bill. They have got to produce all the statistics and other information required by this bill.

They are just about discouraged, and it does seem to me that the suggestion made by Mr. Emery this morning, that a careful study be made of this whole thing, not just a part of it, but the whole structure, and the question of the control of monopolies and the control of combinations in restraint of trade in interstate commerce, is worthy of your careful consideration. Whether all those things should have a further study that is practical at this time, I do not know. The time could be used for that study without discouraging industry.

There is one additional thing I may say. I noticed in some of the testimony that some reference was made to what is called the basing-point situation. There is a situation which I know from observation and my own experience the defects in it. It has a very practical means and method of price maintenance to the detriment of independent competitors. I know that from experience. I have given some testimony before the Senate Finance Committee in 1935, when the extension of the N. R. A. was up, and the facts and figures are in that record. Why not put the Federal Trade Commission into that sort of thing, rather than make it a bookkeeper for all the industries in the country, and all the commercial concerns of the country, because that is where this will finally get. I think you will kill the Federal Trade Commission by this bill. I think you are impeding the chance of real recovery by this bill.

Therefore, in behalf of the people for whom I desire to speak, I say please do not have such legislation at this time.

Senator O'MAHONEY. We appreciate very much your clear and comprehensive statement.

The committee will stand in recess until tomorrow morning at 10:30.

(Whereupon, at 4:45 p. m., a recess was taken until the following day, Thursday, March 17, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

THURSDAY, MARCH 17, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to recess, in room 212 Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (chairman), Borah, and Austin.

Present also: Hon. G. Townsend, a Senator from the State of Delaware.

STATEMENT OF HON. DANIEL O. HASTINGS, A FORMER SENATOR IN CONGRESS FROM THE STATE OF DELAWARE

Senator O'MAHONEY. Senator Hastings, you may proceed. First, please give your name and residence.

Mr. HASTINGS. Daniel O. Hastings, attorney-at-law, Wilmington; Del.

Senator O'MAHONEY. Formerly a very distinguished member of the United States Senate.

Mr. HASTINGS. Please do not put that in the record as my description.

Senator O'MAHONEY. You may proceed.

Mr. HASTINGS. Let me say at the outset that I have made a sincere effort in this statement that I have prepared to make suggestions which I think would improve the bill without defeating any of its objects. I have also earnestly attempted to point out the dangers that may follow its adoption. May I state also that I think it is a mistake to assume that a corporation organized under the general corporation law of any State has thereby been given a license to engage in interstate commerce in defiance of the provisions of the Constitution which gives to the Congress the control of such commerce. Speaking generally, the corporation may be compared to the individual. It becomes necessary for each to comply with the law of every State in which they do business. The fact that the businessman finds it more convenient to do business through a corporation should not of itself condemn him. Indeed, I should suppose that a corporation organized under a law passed by the Congress, would be compelled to comply with the corporation law of each State in which it desired to do business. This might not be true of a corporation that was engaged wholly in interstate business, but except for the control the Congress would have over its corporate structure, which control it undertakes by the provisions of this bill, I see no possible advantage of Federal corporations over State corporations. I think there will be many differ-

ences of opinion as to whether the findings of fact set forth in section 1 are indeed facts at all. I do not think that corporations are instrumentalities of commerce, nor do I think the cause of such maladjustments of wealth can be controlled or eliminated by this bill.

Senator O'MAHONEY. You do not think a corporation is an instrumentality of commerce?

Mr. HASTINGS. It may be an instrumentality in commerce, but not of commerce.

Senator O'MAHONEY. I see the distinction.

Mr. HASTINGS. The growth of corporations and the concentration of wealth in corporate hands has not impaired the economic bargaining power of labor employed by such corporations. The largest corporations, such as the General Motors, and the United States Steel are fully organized by the labor organizations, while many of the independent and small steel corporations and many other small corporations are not so organized.

The definition of the word "commerce" and the word "corporation" as stated in section 2 is so broad that it includes practically all business. As I understand it, it applies to every form of business organization except an unlimited partnership and single individuals doing business in their own name, subject to the limitations upon the size of business as set forth in section 3. In section 7 the prohibition therein set forth applies to all corporations, but not to individuals.

Section 3 makes the act applicable to all corporations that has had "at any time during the 3 years immediately preceding the time when it so engages in commerce, gross assets the value of which on the books of the corporation and its subsidiaries exceeded \$100,000." I assume this applies to corporations having assets of \$100,000 although their liabilities may be as much or more than that. Such corporations are just "hanging on" hoping the tide will turn and they can escape bankruptcy. As I understand it, this bill applies to such corporations, and there are thousands of them.

My prediction is that the cost to such corporations to comply with this law will take the profits of 1 whole and prosperous year, at least. The Government red tape that will be necessary to comply with this law and the rules and regulations that it will be necessary for the Federal Trade Commission to adopt will be so ponderous that it will be impossible for the average corporation to comply with it without assistance. The Civil Service Commission under section 20 will be overrun with applications for certificates as "certified corporation representatives," and such representatives will make the money made by the group of lawyers described by Professor Ripley when he was before the committee last April as engaged in "charter-mongering business" look like the proverbial 30 cents.

The man with a small amount of capital and a new idea which he wants to develop finds himself in this position after the passage of this bill: (1) He cannot control his own corporation because he has to sell more than 50 percent of the stock to raise the necessary capital; (2) he has to register the stock with the Securities and Exchange Commission; (3) he has to get a license from the Federal Trade Commission; (4) he has to file income tax reports. It will be difficult to get started in less than 1 year and he cannot get any of these things done without great worry, labor, and expense. The natural thing for him to do is to invest his money in tax-exempt securities and let some-

body else worry about the unemployed and the balancing of the Federal Budget

Paragraph (b) of section 3 provides that the applicant shall file with the Commission a sworn statement with respect to its operations, which statement shall include certain information set forth in the bill "and such further information with respect to the operations of the applicant as the Commission, may, by regulation require as necessary or appropriate in the public interest or for the protection of investors." The statute requires information upon 29 different points and the chances are that by the time the Commission makes its rules and regulations this number will be greatly enlarged. Except in the simplest kind of a case, the usual and probably necessary governmental red tape will make it difficult for the corporation to comply with these provisions. The only purpose for this information is "in the public interest or for the protection of investors." I suppose the idea is that if all the facts required are disclosed and made a part of the public record, that will in some way furnish a protection to investors and will therefore be in the public interest.

If I understand the bill correctly nothing disclosed in this paragraph can be used to prevent the corporation from securing a license unless the facts disclose that the corporation is a part of an unlawful combination and is therefore in violation of section 4 of the act. But think what will happen to the corporation which discloses a situation when it makes an application which some employee of the Federal Trade Commission believes to be against the public interest and which does not protect the investor. Suggestions will be made as to the necessity for amendments to the charter of the corporation, for eliminating this, and for eliminating that, and unless these suggestions are followed there will be a long delay in this corporation getting the necessary license. The persons making the examination may very properly conclude that, in view of the fact that these requirements were made for the protection of the public interest, and for the protection of investors, if in their judgment the public interest and the investors are not so protected that such employee has some duty to see to it that the corporation's affairs are so modified and changed as to adequately carry out the intention of the Congress when it provided for the public interest and the protection of investors. The furnishing of this information is made compulsory by paragraph (d) of section 3.

Paragraph (e) of section 3 undertakes to set up a simple method by which existing corporate charters may be made to fit into the requirements of this act. It undertakes to enlarge the authority given by the charter by providing that such corporation—

shall have power under its charter, by mere act of its board of directors, to accept any charter restriction that Congress imposes as a condition of its right to engage in such commerce, the law of any State or the decision of any State authority to the contrary notwithstanding.

I have observed that during these hearings much criticism has been directed at the general corporations law of the State of Delaware because it gives so much freedom to persons in control of a Delaware charter. I would like to state, however, that the Delaware law does not permit any such change in its charter as is contemplated here, "by mere act of its board of directors" and regardless of any act of Congress no reputable lawyer would advise a Delaware corporation

that, merely because an act of Congress undertook to authorize the board of directors to use this method of complying with the act of Congress that would justify the board in taking such action, or that it would be legal if it were so taken. A corporate charter is a contract between the State and the corporation and between the corporation and its stockholders; no corporation can violate the provisions of such a contract. Assuming that the Congress can in its efforts to regulate interstate commerce place certain restrictions upon State corporations which desire to engage in such commerce, it does not follow that the Congress can change the status of that corporation with its own State. The mere fact that the Congress has issued such a decree does not relieve the corporation from the responsibility of complying with the provisions of the contract it has made with the State. Every corporation that undertook to follow this provision of the act would be met with all kinds of suits by stockholders who were not called upon, as is required by the statute, to vote upon the important matter of amending its charter. The result will be that practically all of the corporations now existing which undertook to get a license would first have to reorganize their whole corporate structure.

I have no comment to make with respect to section 4 which provides that unlawful combinations shall not be entitled to a license.

With respect to the conditions set forth in section 5, it does seem to me that it is a mistake to put in paragraph (a) in this particular bill relative to discrimination against female employees. I seriously doubt whether this would be any help to such classes of employees. I think that section, as well as sections (b) and (c), ought not to be in a bill of this character.

Paragraph (d) of section 5 provides that the Commission may direct the licensee to—

refrain from dishonest or fraudulent trade practices, from unfair methods of competition which have been so defined in the courts of the United States or established by orders of the Commission made subject to judicial review, from violations of the antitrust laws as described in section 4 (a) of this act, and from monopolizing, or attempting to monopolize, any part of commerce.

There, of course, can be no objection to the general purposes of this section, but I have very grave doubt whether the Commission should be permitted to establish orders of its own relative to the construction to be placed upon the antitrust laws.

It is true that the wise provision is made for a "judicial review," but it seems to me that the Commission ought to be compelled to stick to the interpretations that have already been made by the court. It may be that the thought of those framing the bill is that the Supreme Court may be willing to revise some of its former rulings, but I think that if the Congress disagrees with the rulings already made the proper way to correct them is by direct action by the Congress itself by way of amendments to the antitrust laws, and not leave it to the Federal Trade Commission and thus again place the responsibility upon the courts. In addition to these reasons the matter of the cost of a review and the delay incident thereto is a serious proposition from a business corporation's viewpoint.

I want to discuss paragraph (e) of section 5 at this time at some length. That paragraph reads as follows:

That, in the case of any licensee organized after the date of enactment of this Act, it shall have its chief place of business and its executive offices, and the

meetings of its board of directors or trustees shall be regularly held, within the State, Territory, or possession under the laws of which it is organized, and if organized under the laws of the District of Columbia it shall have its chief place of business and its executive offices, and the meetings of its board of directors or trustees shall be regularly held, in the said District.

I have no doubt that the purpose of this section is to partially, if not wholly, destroy the use made of the general corporation laws of many States, and the State of Delaware in particular, by persons interested in doing business in the form of corporations. I realize, from a hurried examination of a part of the testimony that has been taken by this committee on this bill, that the Delaware corporation law is believed by many, including some members of the committee, to be the most convenient instrumentality of corporate rascality that is in existence. While I may not be able to justify the existence of general corporation laws, adopted by many States, I do think I can convince the committee that there is no justification in picking out for attack the Delaware law in particular. I think I can also convince the committee that every illustration given to the committee of some unfair and shocking thing that has happened during the existence of a certain corporation does not justify the committee in promptly inquiring "was that a Delaware corporation?" If it be true that the greatest number of instances justifying complaint have occurred with Delaware corporations, it is due to the fact that a great number of corporations have been created under the Delaware law, but the popularity of the law which makes this number so great is due to its stability, and not because of the opportunity to permit improper things to be done.

In order that I might get some idea about the theory of those who were in favor of this bill I examined a copy designated as part 3 of the hearings before a subcommittee on S. 10, which had some similarity to the present bill. I was particularly interested in the testimony given by Prof. William Z. Ripley, professor of economics, Harvard University, and his own statement of his experience clearly justified the assumption that he was an expert upon this subject.

Professor Ripley gave a partial history of the enactment of general corporation laws by stating that the first State to adopt such a plan was the State of Maine and next the State of New Jersey, and then closely followed Delaware and Maryland. He says:

Delaware and, to a certain degree, Maryland, have vied with one another in granting powers, reaching a degree of license which nobody ever dreamed of before.

He also says:

All sorts of devious devices were brought forward; freedom to declare dividends out of capital; freedom to designate surplus as they pleased, paid-in or earned; misuse of the whole set of preemptive right which from the beginnings of incorporations had been given to the stockholders; and particularly the granting of power solely to directors, without even an affirmative vote or even notice to the stockholders. Those are some of the things the board of directors can do under the corporate laws of Delaware and Nevada.

And again:

As a matter of fact, the charters in a good many cases do not contain very much. Most of it is left to the bylaws. I was amazed the other day in the case of a large coal company to find how rudimentary the charter was. That was a Delaware charter. All of the preference in relationships between stocks, callable

and noncallable, features, preemptive rights, all down the line, were left to the bylaws. Those bylaws delegate power to the directors to do certain things without even notification to the stockholders.

The statements made by Professor Ripley as quoted above are not true; the particular coal company charter that he refers to as a Delaware charter, does not in any sense comply with the Delaware law. Senator O'Mahoney asked this question—

* * * then we may assume that the directors have the power, without reference to these stockholders, who subscribed the original capital of the corporation, to issue new shares of stock that may dilute if not destroy the value of the original investment?

Professor Ripley did not answer the question directly, but he did say this:

One of my intimate acquaintances had shares in the American Agricultural Chemical Co. The depression came on. Those shares were entitled to cumulative dividends. So large an accrual of unpaid preferred dividends piled up that the common stock became practically worthless.

Then the professor goes on to state that a reorganization was proposed, a new corporation was set up and an offer was made to the old preferred shareholders to receive a new type of preferred stock for the old. The new shares were callable at a certain fixed price. The professor said his friend sold his stock but kept an eye on the corporation to see what would happen. The result was that the new preferred stock was called and the common stock became exceedingly valuable, and he concludes that the entire affair was practically fraudulent. The only criticism I can get out of this is that his friend was persuaded to give up shares that had a large accrual of unpaid preferred dividends and he was defrauded out of these accumulations of dividends by making the exchange.

Under the Delaware law he could not have been compelled to make the change. He could have held his stock and collected his cumulative dividends even though every other share of preferred stock had voted in favor of the reorganization.

Then the professor tells about a meat-packing industry that was incorporated under the laws of the State of Maine, and how certain people on the inside were acquainted with the fact that certain lands owned by the corporation increased in value, and he complained that no disclosure was made of this fact to the stockholders. The owner of this stock was a member of the Harvard faculty, and then he explained how the property was sold to a new corporation and how his Harvard friends were induced to take the attractive offer of preferred stock in the new company, and how certain people profited by the transaction.

Just how any general corporation law in any State could have protected his Harvard friends from this kind of transaction he makes no effort to explain. Professor Ripley, after referring to Maryland, Delaware, Maine, and New Jersey as being bidders for this corporation business points out that:

Some of the States are trying to uphold higher standards, but find they cannot get anywhere with it.

He mentions the State of Ohio and the State of Michigan, and with respect to the Michigan law he says:

But it was so refined that nobody ever resorted to it. It is all very well for Ohio, Michigan, New York, and Massachusetts to formulate sound and wise

company statutes, but if nobody would take out such charters under which to do business, what was the use?

Professor Ripley says these laws were "so refined that nobody ever resorted to it." Is that a condemnation of all persons who are interested in business through the instrumentality of corporations, or is it an admission that in order to give business corporations the freedom of action which corporations find necessary to do a legitimate business they must incorporate in some State whose law is not "so refined?" It seems to me that it is perfectly clear that, if you make a general corporation law "so refined" that crooks cannot use it to their advantage, you at the same time have made it so refined that legitimate business is handicapped by its provisions.

Professor Ripley calls attention to the fact that the Securities and Exchange Commission has done much to correct abuses.

But that has not wholly put an end to the practice. It is still possible for a director of a corporation who knows there is a substantial accrual in the treasury, both in the value of undisclosed assets and of earnings, to observe, casually of course, to a friend: "This would be a good time to buy 5,000 shares in our company." Nothing more is said. At the expiration of 6 months that stock is \$500,000 more than it was before. There are many means by which to discharge the obligation. That sort of thing is being done in certain companies without let or hindrance.

I wonder if the Professor thinks the Ohio and Michigan law which he refers to as being "refined" would have prevented this sort of thing.

The Professor cites another instance, that of the Gillette Razor Co., in Massachusetts. He says:

Certain corrupt directors of the Gillette Razor Co., after the war—when they made a good deal of money—found a host of competitors springing up on every side. They figured that the future looked dark. It was decided they had better sell out their personal holdings. But to sell out to advantage they must at least make an appearance of increasing the corporate earnings.

And then he proceeds to tell how that was done and how during that period the people on the inside were disposing of their own stock.

But I am wondering whether the professor thinks that if that corporation had been incorporated under a "refined" State law, it would have prevented that sort of rascality.

I remember that when I was in the Senate the distinguished Senator from Alabama, Senator Black, now a member of the Supreme Court, was constantly criticizing the general corporation law of Delaware. I had supposed when he was leveling this criticism at the State of Delaware that his State was one of those States whose laws were "refined," but I find upon examination that in the State of Alabama you can incorporate a small company by paying a dollar for each 1,000 shares of proposed capital; you pay \$2.50 for examining the charter; \$5 for recording it and a like amount for a certified copy; for issuing the charter you pay a dollar, and for filing a statement in the office of the secretary of state you pay \$2.50. In addition to that you pay an annual franchise tax for the first year for a permit to do business, \$10 if the capital stock is only \$25,000, and if it is \$150,000, it will cost you \$100. Then you have these additional features:

1. You may have any number of purposes stated in the charter.
2. No requirement as to the residence of the incorporators or directors, but the directors must be stockholders.

3. The amount with which incorporators commence business must be not less than 25 percent of the authorized capital stock, and in no case less than \$1,000.

4. The corporation shall have power to do business outside the State.

5. The corporation has perpetual existence.

6. The stockholders' meetings may be held outside the State if the consent of all the resident stockholders is recorded in the secretary of state's office.

7. Directors meetings may be held outside the State but the minutes of all meetings of stockholders and directors held outside the State must be deposited with the registered agent in the principal office of the State.

8. The stock may be classified in any way that may be desired.

9. Shares without par value of either common or preferred stock may be provided for.

10. Stock may be issued for property at the reasonable value thereof.

11. Stock dividends are expressly authorized.

12. No limitation is placed upon the amount of indebtedness.

13. The corporation may hold stock and bonds of other corporations.

14. The books, records, and papers of the corporation are open to the inspection of the stockholders.

15. Mining, manufacturing, power, and quarrying companies have the power of eminent domain.

16. The stockholders' liability is limited to stock subscriptions.

17. Alabama is one of the two States which does not provide that directors are liable for debts of the corporation if the capital is impaired through declaration of dividends.

18. It is also one of the two States which do not require the president to be a director.

Speaking generally, I should suppose that the criticism of Professor Ripley of general corporation laws in general would apply to the State of Alabama quite as well as it would apply to Delaware. Why is it then that those desiring to incorporate should not go to Alabama as readily as they come to Delaware? How many answers there are to that question I do not know, but there is one outstanding fact that I think will appear to any person who examined that law. There is a 3-percent tax on net income of Alabama corporations. There is some sort of a tax on domestic corporations in 28 States of the Union other than the franchise tax. In Delaware there is no tax at all except the franchise tax. That is one of the reasons why paragraph (c) of section 5 will do great injury to the business world. It will be necessary for them to incorporate in the State where they have their principal place of business whether they like the law of the State or not.

Just at this point I should like to incorporate in my testimony a pamphlet entitled "Delaware's Black Flag," which was an answer by Christopher L. Ward, Esq., of the Delaware Bar to an attack made in an article by Mr. John T. Flynn in September 1932, published in Atlantic Monthly, entitled "Why Corporations Leave Home." Since 1932 other States have joined those mentioned in this pamphlet and the number is somewhat larger than the number mentioned. Mr.

Flynn made practically the same statement before this committee when it was considering S. 10, as was published in his article. I should like to have this incorporated in the record.

Senator O'MAHONEY. Did you bring Mr. Flynn's article?

Mr. HASTINGS. No.

Senator O'MAHONEY. Do you know whether anyone made any response to this pamphlet?

Mr. HASTINGS. I do not. As a matter of fact, I did not read Mr. Flynn's article or his testimony. Many lawyers in Delaware did read it, and this is Mr. Ward's reply to it at the time.

Senator O'MAHONEY. My thought was that if this article is going in perhaps it would be proper to include Mr. Flynn's article.

Mr. HASTINGS. Of course, that would be up to the committee. My understanding is that when S. 10 was being considered Mr. Flynn was here and made substantially the same statement as contained in his article.

(The pamphlet referred to is here set forth in full, as follows:)

DELAWARE'S "BLACK FLAG"

A reader of Mr. John T. Flynn's article in the September Atlantic Monthly, "Why Corporations Leave Home" may be expected to vision fleet after fleet of piratical corporations, armed and equipped with destructive devices denied to the corporations of other States and uncontrolled by any proper legal restrictions, setting sail under the black flag of Delaware's corporation laws to prey on innocent merchantmen—a spectacle horrifying to the uninitiated, but only to the uninitiated for the main and simple reason that many of Mr. Flynn's facts are not facts, much of his law is not law, and practically all of his conclusions are grotesquely false and misleading.

His specific allegations of "glaring laxity" in the law, of things not permitted, we must infer, by other States, are 10 in number. Let us consider them.

1. "Directors need not be stockholders." True. True also of the laws of 28 other States, including such conservative commonwealths as Massachusetts, New York, New Hampshire, Indiana, Minnesota, Michigan, Ohio, Pennsylvania, Rhode Island. Other States require a nominal stockholding, generally three shares. Is there any safeguard of corporate or public interest in this minimum requirement?

2. "No officer or director need reside in the State." True. True also of 35 other State laws, including those of all the New England States. And what of it? The jurisdiction of the State courts is preserved by requiring a resident agent on whom process of law can be served, which is the only justification for the single resident director required by the laws of seven other States.

3. "Stockholders must meet there," in Delaware. Untrue. The law provides that all meetings of stockholders shall be held in the State unless otherwise provided by the bylaws. More than 95 percent of Delaware corporations do thus otherwise provide and hold their meetings where their business is carried on. Mr. Flynn's statement that "an average of 100 corporation meetings a day (are held) in Wilmington" is absurd. The daily average may be three or four. Probably less than 1,000 corporations out of 35,000 actually hold their meetings in Delaware.

He draws a picture of crowds of prosperous, self-possessed men of large affairs, their pockets stuffed with proxies, reelecting themselves as directors of their respective corporations. This is true of practically all corporations wherever organized. Stockholders almost universally send in their proxies instead of attending meetings in person. Every State allows this. Directors almost universally reelect themselves, which is just what the stockholders intended when they sent in their proxies. This may be a deplorable habit. It might be desirable rather that all the stockholders of the American Telephone & Telegraph Co., 712,000 in number, should attend their meetings in person. To be sure they would need a meeting place six or seven times the size of the Olympic stadium at Los Angeles. But a meeting of General Motors' 340,000 stockholders would need only one-half that large.

4. "The directors may * * * affect the preference on old stock, without the approval of the stockholders." Untrue. No adverse change in the preferences of old stock is permitted by the Delaware law without an amendment to the charter, approved by affirmative vote of the holders of a majority of such stock.

5. "The right to elect all or a majority of the directors may be limited to one class of stockholders." True. True also of every State corporation law except two. The usual case is that of preferred stock without voting rights, a commonplace in corporate structures.

6. "Stock may be issued not only for cash but for property (and) services." True. True also of every other American corporation law except two, which do not recognize services as a consideration for stock. And why not? These are all things of value, legal considerations for binding contracts. And," Mr. Flynn goes on, "for the products of one's brain," whatever that may mean. There is not a word in the law to support this statement. The consideration for stock is strictly limited to cash, labor done, and real or personal property.

7. "Stock may be issued, of course, without par value." True. True also of every other State corporation law except those of Nebraska, North Dakota, and Oklahoma. But, Mr. Flynn says, this becomes "a deadly thing" when such stock may be issued from time to time at such terms and prices as the directors may fix and that such stock may be legally issued to the public at one price, to the stockholders at another, and to themselves (the directors) at another so as to defraud stockholders and rob them of their rights. Untrue. The Delaware courts have repeatedly held that the price of an issue of no-par stock must be such as to be "fair to the corporation and to existing stockholders." Fraud, on the part of directors, in such cases, actual or constructive, such as improper motive or personal gain or arbitrary action of conscious disregard of the interests of the corporation and the rights of its stockholders, will void such issue.

8. "The baleful system of issuing rights and stock purchase warrants * * * is permitted under the Delaware law." True, except for the adjective, "baleful." Such powers are common to all corporations. The Delaware law merely recognizes and regulates them.

9. "Less than a majority of the board may constitute a quorum." True. True also of at least one-third of all State laws, including those of Massachusetts, Vermont, Connecticut, New York, and Ohio.

10. "A corporation may be conjured into existence almost as fast as a magician can produce a bouquet of flowers from a hat." True. True also of almost every other State, where incorporation is had by the filing of a certificate. Only a few States require advertising or other delay.

So, now, what of all these 10 points? There is not one of them that is not common to many State corporation laws, most of them are well-nigh universal. So Mr. Flynn's quarrel must be, not with the Delaware law, but with the whole modern corporation system. He suggests as a remedy a Federal incorporation law.

Corporations do swindle thousands of investors, just as motorcars kill thousands of pedestrians. Suppose, now, that the national Constitution were amended so as to deprive the States of their right of grant franchises to corporations and to vest that right solely in the Federal Government, would that rid us of the abuse of corporations in the hands of the unscrupulous, would that "make America safe" for investors and insecure for promoters? Well, perhaps both corporations and motorcars can be made harmless. Let a Federal law require all automobiles to have elliptical wheels. I guarantee they will not run fast enough to overtake an infant. Similarly, let corporations be organized under restrictions making their functioning as business entities impossible and they will be equally harmless. As long as there is a gullible public and rascally financiers, there will be the abuses Mr. Flynn deplors. Even in the old days of individual ownership of business and of the covered wagon there were swindles and fatalities.

WHY DO CORPORATIONS LEAVE HOME?

It appearing then that the Delaware law is in none of the 10 points alleged by Mr. Flynn unduly "liberal" or singularly lax, as compared with the laws of other States, the question "Why do corporations leave home?" is unanswered by him. Why do they? Why, for instance, does the Federal Government go to Delaware to organize its National Credit Corporation, its Commodities Finance Corporation, its Flood Credit Corporation, its Grain Stabilization Corporation, and so on? The answer is easily discoverable.

Organizers of corporations flock to Delaware because the 35 years of age of its corporation law indicate a fixed and settled policy ensuring corporations a continuity of fair treatment; because the law has been amended from time to time to keep pace with legitimate, modern business methods; because it has been expounded by the courts in innumerable decisions that leave few debatable questions to puzzle legal counsel; because Delaware imposes no inheritance or other tax on stock held by nonresidents, nor any income tax on the corporation, nor any stamp tax on stock issues, but only a moderate fixed franchise tax—it is inexpensive; because it combines all the desirable features of the laws of other States without relaxing beyond the bounds of prudence and safety; because Delaware corporations are as well known and as standard as Ford cars and as safe.

Senator O'MAHONEY. You may proceed.

Mr. HASTINGS. Mr. Ward gives his opinion as to why organizers of corporations come to Delaware. But I should like to add an additional reason.

We have in Delaware a nonpartisan judiciary, the members of which are able lawyers and they are all appointed by the Governor for a term of 12 years. They are usually reappointed at the end of their term. They have interpreted the general corporation law of the State of Delaware with the greatest care; they have protected the minority interest against the oppression of the majority in all instances where that was possible. There may be an occasional case where they are unable to interpret the law in a manner that does equal justice, but that statement is probably true of every statute, State or Federal. It was but recently that our Supreme Court decided that the accumulated dividends on a preferred stock could not be taken away from a stockholder by the vote of other stockholders in that class even that vote was as large as the statute required. In addition, you get a prompt decision in the courts of Delaware, which is always a desirable thing in litigation.

The statute in Delaware has been in existence for nearly 40 years. It has been amended many times but these amendments are not made without the use of the greatest caution. It is usually done upon the recommendation of the Bar Association and by a committee that has had experience with the existing law. The amendments are made for the purpose of assisting legitimate business. Of course, it is impossible to write a law that is convenient for the business world which cannot be used by the unscrupulous for improper purposes.

I desire to call attention to the fact that during the years of 1933, 1934, and 1935, 62 corporations were organized in Delaware by the Federal Government, or, more accurately stated, by agencies of the Federal Government. These corporations included branches of the T. V. A. in Tennessee; it included projects in Virginia, West Virginia, New Jersey, Pennsylvania, Alabama, Minnesota, Texas, and Wyoming. Certainly, those persons responsible for these corporations believed they were being organized for a proper purpose and in the public interest, and it seems to me it is a compliment to the Delaware law to find that the lawyers who were undoubtedly consulted with respect to this matter should have selected the State of Delaware for this large group of corporations.

I observe that during this examination reference has been made several times to the testimony of Robert H. O'Brien, Esq., assistant director, Registration Division, Securities and Exchange Commission. The illustration given by Mr. O'Brien was as follows:

I might say in reference to the Sinclair Oil Co. that we had a registration statement filed a short time ago which showed a capital structure of 100,000 shares of

class A stock and 100,000 shares of class B stock. The 100,000 shares of class B stock possessed all the voting power. The A stock had no voting power. That was offered to the public at \$2.50 a share, which would be a contribution of \$250,000. The B stock was all purchased by the promoters at 1 cent per share. It was 10,000 shares instead of 100,000. They obtained complete control for \$100 as compared with the contribution of \$250,000 by the Class A stockholders.

Further along in response to some questions he stated:

* * * For instance, in that case, as I recall it, the class A stock had a preference to dividends which amounted to about 6 percent. Thereafter the common stock participated equally with that senior stock in any earnings over the amount required to pay that preference. The percentage to the promoters on that might run up as high as 3,000 or 4,000 percent, while the class A would get 10 or 12 or 15 percent, if they were making those earnings.

Mr. O'Brien says that he thinks this was a Delaware corporation. Undoubtedly that could have taken place under the Delaware law, but it seems to me that before it is condemned you must ask and answer the following question: Is it desirable in the United States to place a limit upon the amount that an American citizen may receive in a strictly private and legitimate business? If the answer to that question is what the average American believes it to be, namely, that there is no limit, then in my judgment transactions similar to this can be justified. I use the word "similar" because I do not know anything about this corporation. I concede that it would have been possible, if there were no restrictions other than that stated, for improper things to be done, but I think I can give an illustration that shows the great danger of providing by law that all classes of stock shall have the same voting rights.

Suppose you take an experienced mining prospector who has discovered valuable minerals in some western State. I do not know whether it is true now or not, but there was a time when all that such miner had to do was to stake out his property. It is something that he has discovered by his own skill, and it becomes his own, but he finds in order to operate it he must have as much as \$250,000. He concludes to create a corporation with 100,000 shares of class A stock bearing preferred dividends at the rate of 6 percent and having a liquidating value of \$2.50. In addition to the 6 percent, provision is to be made in the charter that the 100,000 shares of class A stock shall share equally in dividends with the 10,000 shares of class B stock, for which the miner has paid only \$100. With this proposition he approaches a group of people, interests them in the proposition and they agree to all his terms except that they want the dividends on the class A stock to be 8 percent. He approaches another group and they agree to invest their money on condition that the dividends shall be 7 percent. In an effort to make the best deal possible he finds a group that will accept his proposition with the class A stock bearing only 6 percent.

He then goes to Delaware and creates his corporation on the conditions set forth. Bear in mind that he is an experienced man and knows how to get the most out of the mine, while the persons who have made the investment have no knowledge whatever of operating a mine. Perhaps he has had experience before in other mines where the people who invested the money have taken the management away from him, destroyed the mine and destroyed the value of any interest he had in it. Bearing that in mind, he determines that that shall not happen in this case and he maintains control of his corporation by

means of the provisions set forth in his charter. This does not mean that the class A stock has no rights in case of fraud or mismanagement. At any time that fact can be shown to a court in the State of Delaware the class A stockholders through receivership or otherwise can take the business away from its promotor.

I cite this rather lengthy illustration for the purpose of demonstrating that if you are to make any progress in this country you must do it through the initiative of somebody—this miner who has created something by finding valuable things in the ground and developing them has done something for himself and the community.

If you will permit me, I will give one more illustration which demonstrates the necessity which I hope may show the danger of assuring to every stockholder the same voting rights. Take a man who has developed a business, employing 50 people, and its value to him is \$100,000. He reached the conclusion that if he had \$400,000 more he could afford to pay 7 percent for it and could employ 200 more people. He finds people with money in the savings bank, drawing $1\frac{1}{2}$ to 2 percent interest, who are willing to take a chance in that business, and they are willing to take the chance largely because they have confidence in that particular individual. He takes the money, but on condition that, as long as he pays the dividends of 7 percent, he shall control the corporation; if he couldn't do that he would not take the \$400,000 at all because he does not want to lose control of the business which has been successful up to this point.

The usual provision with respect to the voting rights of preferred stock is that in case dividends are not paid for a certain length of time, usually 1 year, then the preferred stockholders shall have a right to vote. Under the present tax law, this corporation would be compelled to distribute its profits, and would not have accumulated a large surplus. In case of a depression and profits were not made, and preferred dividends were not paid the voting rights of the preferred stockholders would attach. This always offers an opportunity when the stock is widely distributed, for some ambitious person to get enough proxies to control the election of directors, and throw out the old management. This risk was always known to the man who created the corporation. His confidence in himself, from his viewpoint, made this risk negligible. Taxes on surplus profits greatly upset his calculations, and if this bill should be adopted it would thoroughly destroy his original plan. Most people with experience, invest money and extend credit because of their confidence in some individual or group of individuals. They are many times deceived, it is true. Injury could undoubtedly come to investors in the illustrations I have given and the question immediately arises as to whether the evils are so great that you must take some such drastic action as this.

A careful examination of the statutes of all the States and the District of Columbia shows that there are no statutory provisions with respect to the voting rights of stockholders in four States: Arizona, Kansas, Nebraska, and Texas. There is but one State, namely, the State of Illinois, that requires that all stock shall have a right to vote. The other 43 States and the District of Columbia expressly authorize issuance of nonvoting stock.

Such legislation as is proposed here will change the form of investment in preferred stocks to one of bonds, but I think experience shows that bondholders are in but little better position than the preferred-

stock holders. It is true that he is a creditor and comes first in liquidation, but the preferred-stock holder has a preference as to dividends and a preference of assets in case of liquidation. The common-stock holder who is junior to both must depend upon his skill in management to get anything for himself and associates.

This bill places the following restrictions upon all corporations regardless of the State in which they were chartered. In other words, it constitutes a correction of what has been described as the loose provisions of the general corporation laws everywhere.

First:

The chief place of business and its executive offices, and the meetings of its board of directors or trustees shall be regularly held, within the State, Territory, or possession under the laws of which it is organized (par. (e) sec. 5).

I do not see why this provision is necessary to accomplish the objects of this bill. If you put other restrictions upon the corporations, such as is hereinafter mentioned, I conceive of no particular reason for imposing upon business corporations the necessity of incorporating in the State in which its chief place of business and its executive offices are located, nor do I see any advantage in compelling the board of directors to hold their meetings at such place. Think what would happen to a corporation which found it necessary to change its principal place of business from one State to another. It would become necessary to incorporate in another State and under some State laws it might be necessary to liquidate the old corporation.

Second:

That the licensee shall have only such powers as are incidental to the business in which it is authorized to engage, and these powers shall not include any power to hold the stock of any other corporation unless it had such power on the date of the enactment of this act or unless such other corporation is a subsidiary of the licensee, nor shall it have any power outside of the jurisdiction of its incorporation, which it does not have within such jurisdiction (par. (f) sec. 6).

Speaking generally, I can see some possible advantage in restricting the powers of corporations to the business incidental to the business it is authorized to engage in, but if you do so restrict it, the powers that are incidental to the business are so uncertain that you constantly have the question raised as to whether a particular thing, in the case of an emergency, is within the corporate powers of the corporation. Many illustrations could be given showing the great hardship such a rule would impose. It would be a distinct shock to the business world and if there be any advantage in adopting the rule it certainly does not compare with the disadvantages. Forty-one States and the District of Columbia have no such limitations.

That provision of the above paragraph which prohibits the power to hold the stock of any other corporation evidently destroys the purpose of investment trusts. I assume that investment trust corporations are intended to come within this act. It would be a serious thing to prevent a corporation from acquiring and holding even temporarily the stock of any other corporation for any purpose whatever. Its effect is so far-reaching as to be practically without limit. The disastrous effect it would have upon corporations generally could only be determined by actual experience.

Third:

That all stockholders or members of the licensee shall have an equal right to vote the number of shares held by them, respectively, at all stockholders' meetings

and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder * * *: *Provided*, That no other corporation or association shall be entitled to any such vote or voice directly or indirectly at any meeting of its stockholders, except that the stockholders of any such other corporation or association shall be entitled to cast their pro rata share of the stockholding of such other corporation (par. (g) sec. 5).

I have heretofore commented upon the provisions in the first part of this paragraph; the latter part which prevents a corporation from voting directly or indirectly the stock that it may now own in another corporation, as provided in paragraph 2 above, but which provides that the stockholders of any such corporation or association shall be entitled to cast their pro rata share of the stockholding of such other corporation is, I think, an impractical provision. I do not see how it can serve any useful purpose. The management of a corporation is selected by its stockholders. It is presumed that when this selection is made a majority of the stockholders have confidence in the board of directors selected. It is but a duplication to require that those same stockholders shall participate in the selection of directors of some corporation whose stock is owned by that corporation. The effect of such a provision upon a corporation which held the stock would not only be to prevent the corporation from voting the stock, but would prevent it from being voted. If the stock be in the name of the corporation it is only the corporation that can vote it. This could not be corrected by amendment of the charter of the owning corporation. Before there could be any pro rata share voting as provided herein the law of the State of the corporation whose stock was being voted would have to be amended. Just what evil this is sought to correct is not clear to me.

Fourth:

That no bonus or commission or emolument of any kind or character in addition to his regular compensation shall be paid to any officer or director of the licensee except by vote of the stockholders at a regularly called meeting. (par. (h) sec. 5).

I do not see that there can be any real objection to the above provision, but I call attention to the fact that in most, if not all, cases, it is a useless provision. The management, when it votes a bonus or commission, is reasonably certain that it has the approval of the stockholders which select the board of directors, and it is not likely to do that which it has reason to believe will be opposed by a majority of the stockholders. There, of course, may be exceptions to this, and certainly the provision cannot be said to be very harmful.

Fifth:

That the stock of the licensee shall be fully paid, or payable in cash or in property or in services where the issuance of such stock for such property or services has been authorized upon application to a competent court and under its order finding upon competent and specific proof that such stock has been or is to be issued for a fair valuation of such property or services (par. (i) sec. 5).

An effort is made in this provision to get the approval of some competent court as to the value of property or services before stock can be issued in consideration therefor. If this be a desirable provision I would suggest that it would be necessary to give some court, somewhere, the authority to make such determination. I should suppose the Congress would be limited in providing that this should be done by some Federal Court and perhaps in the district where the principal office of the corporation is located.

Sixth. Paragraph (j) of section 5 seems to create no new right nor make any restrictions. I don't quite understand the purpose of paragraph (j). As I read it, together with the latter part of section 20, I do not see that it creates any new rights or makes any restrictions.

Seventh:

No persons shall be eligible to serve as an officer or director of any licensee unless he is an actual owner of stock in the licensee. Unless otherwise provided herein, no director or officer of a licensee shall be a stockholder or employee of any other corporation engaged in the same business, nor shall any such director or officer be a director, officer, or employee of any corporation which has advanced or loaned money or property to such licensee (sec. 19).

I want to discuss section 19 a little out of order because it comes under this heading that I am now discussing. Of course, the provision that an officer or director shall be an actual owner of stock is a familiar provision in many laws, but as a matter of fact it has no actual merit. There is no provision in this bill that such officer or director shall hold a substantial percentage of the stock of the corporation, and the holding of a single share means nothing.

The other provision of the section may, from the viewpoint of many, be desirable, but it will certainly work to the disadvantage of the corporation in many instances. If a corporation should find itself in difficulty, and it became necessary for it to borrow money, it might be much easier, and might be only possible for it to borrow from a bank of which one of the directors of the corporation that was borrowing the money was a director. The bank might be willing to loan the money because of its faith in the business judgment and the integrity of its director who was also a director of the corporation.

Let me summarize the remedy contained in this bill to eliminate the evils of general corporation laws.

(1) The chief place of business shall be the State where the company is incorporated; (2) its powers shall be limited to those which are incidental to the business in which it is authorized to engage; (3) that it shall not have power to hold stock of other corporations unless it had such power on the date of the enactment of this act; (4) that all stockholders shall have an equal right to vote; (5) that the stockholders shall have a right to participate in the voting of the stock of the corporation owned; (6) that no bonus or commission shall be paid except by vote of the stockholders; (7) that a competent court shall determine the value of property or services exchanged for stock; (8) that all officers and directors shall be actual owners of stock in the corporation; and (9) that no director or officer shall be a stockholder or employee of any other corporation engaged in the same business, and that no director or officer shall be a director, officer, or employee of any corporation to which it has advanced or loaned money or property to the corporation.

From these none attempts to cure evils I can discover but two that in my judgment would be substantially effective in accomplishment. One of these is the prohibition against ownership of stock in another corporation; another is the affirmative right of every stockholder to vote. That provision now exists in only one State. It seems to me this is substantially all you accomplish in your efforts to destroy the evils growing out of the so-called loose provisions of general corporation laws. The other provisions constitute handicaps to business corporations without any substantial compensating benefits to the public.

Section 7 of the act legislates with respect to corporations which do not comply with this act. I think the provisions of this section are so broad that practically all kinds of business, whether they have gross assets of the value of \$100,000 or not, will feel compelled to comply with the provisions of this act and secure from the Federal Trade Commission a license to continue their business.

Section 8, paragraph (b), in my judgment, comes very close to Government control of business. I should suppose that the Commission would have complaints from competing corporations almost constantly. Such complaints would have in them statements which on their face would indicate that the licensee was violating its license. Whether the Commission should make an investigation before taking any action is a matter that I assume is to be left to the Commission. The only definite provision made is that the licensee shall be given an opportunity to be heard, and if the Commission be of the opinion that such violation has occurred, the licensee will be permitted to present to the Commission certain evidence of its willingness and capability to comply with the conditions contained in the license, and of the making of suitable restitution, as determined by the Commission, by such licensee to parties adversely affected by the violation of such condition. If the licensee does not offer such satisfactory evidence and does not make restitution, the matter is to be reported to the Attorney General.

Paragraph (c) of section 8 provides that it shall be the duty of the Attorney General to institute proceedings against said licensee and its officers and directors for revocation of such license. The court is given the authority in case the license is revoked to prohibit the guilty officer or director from serving as an officer or director of any corporation engaged in commerce until after the expiration of such period of time as the court may fix. This may, of course, become a life sentence.

It seems to me that this section could be improved upon by making some provision whereby a corporation could ascertain whether some business transaction it desired to enter into was in violation of its license. Under the provisions of this section, as I understand it, it must take the risk, and if there be complaint about it, it shall have an opportunity for a hearing and if found guilty it then shall have an opportunity to convince the Commission of its willingness and capability to comply with the license. Under these circumstances the license will not be revoked. In the meantime, however, it may have entered into a contract, which, upon such hearing, is not approved by the Commission, and thereby it becomes liable to damages. There is no escape from the conclusion that this sets up a Federal bureaucracy with such little freedom of action as to warrant the fear of disintegration and collapse of business corporations generally.

Section 12 sets up the machinery for a judicial review, but it is specifically provided by paragraph (b) of that section that there shall be no stay of the Commission's order unless specifically ordered by the court. The business that has been licensed under this act, therefore, finds itself in the position of having its license revoked and immediately compelled to cease doing business of any kind unless it can convince the court in that particular jurisdiction that the court is justified in staying the Commission's order. I assume this to be a reasonable protection, as the courts of the country are now consti-

tuted, but it does seem to me that this new and untried law ought to provide that the Commission's order, in case of an appeal within a certain fixed time, should not be effective until the court has approved the Commission's order.

Senator O'MAHONEY. Attention should be called to the fact that section 8, which deals with the revocation of licenses, requires the Commission to give notice to the Attorney General who shall proceed for the revocation of the license. I do not think it is contemplated that in the section to which you refer that matter is covered. The order to which that section refers would be an order of a lesser grade than the revocation of the license.

Mr. HASTINGS. Maybe I made a mistake in my interpretation of it.

Section 13. I stated a moment ago that I did not know whether section 8 gave the Commission authority to make investigations. I find the broadest kind of power is given in section 13 (a) of the act. Not only are they given power to investigate, but they can require the licensee to keep such accounts or systems of accounts as the Commission may deem necessary. I should suppose this broad power given by this paragraph was necessary in order that the Commission might intelligently carry out the provisions of the act, but it demonstrates again how completely the business corporation has been compelled to surrender the ordinary and legitimate conduct of its own affairs.

Section 16 provides:

Every contract made in violation of this act shall be void, and no corporation or association shall bring or maintain any suit or proceeding in any court of the United States unless it is organized, conducted, and managed as required by the conditions imposed in section 5 of this act * * *.

This is the kind of provision that would ordinarily be written into an act of this kind, but I call attention again to the ineffectiveness of the effort made by paragraph (b) of section 8 to permit the corporation to correct any mistake that it has made. That provision says that if the Commission shall be of the opinion that a violation has occurred the licensee may save its license by notifying the Commission of its willingness and capability to comply with the conditions of the act and to make restitution, and so forth. But that does not save the corporation from the punishment provided in section 16, making its contract void and preventing it from maintaining a suit. I should think that the licensee might at least be given the benefit of showing that there was no willful violation. That would make his contract voidable but not void.

Section 17 is subject to the same criticism. It reads as follows:

No person or persons shall form, operate, or act as or for a corporation or association for the purpose or with the effect of violating this act, or conspire thereto and of himself or by a co-conspirator do any act or thing to effect such conspiracy.

Under that section a lawyer who made an honest mistake in advising a corporation or association to do a thing, the effect of which violated this act, would be subject to the penalty provided in section 18. In section 18 that follows, the lawful punishment is provided for, a \$10,000 fine, or imprisonment not exceeding the term of 5 years.

May I inquire at this point what possible inducement can there be to any man to divert whatever fortune he may have from a reasonably safe investment, although bringing in only a small return, to investment in a corporation that is surrounded with such pitfalls, involving

what he can do, and possibly subjecting him by reason of his efforts to such punishment as provided in this section?

Section 19 to which I have already referred also makes this odd provision:

Every officer and director of any licensee shall be a trustee of the stockholders of such licensee and shall be liable to such stockholders in actual and punitive damages for any money or property that may be paid or transferred to any other corporation in which he may be an officer or director or in which he may own more than 5 percent of the corporate stock or other securities. No officer or director of any licensee shall, directly or indirectly, or by any device whatsoever take any profit to himself as a result of the trust reposed in him save only such compensation as may be regularly awarded to him by vote of the board of directors.

The first part of this quoted paragraph only states what the law is without a statute, but I don't understand what is meant when it provides that "he shall be liable to such stockholder in actual and punitive damages for any money or property that may be paid or transferred, and so forth." I assume the provision means that no corporation can deal with another corporation if one of its officers or directors owns more than 5 percent of the corporate stock or other securities of the corporation with which it finds it desirable to deal. It apparently assumes that no such transaction could take place without actual damage. It seems to me this language ought to be qualified in some way if it is intended to make the officer or director liable in case there is a damage of any kind.

I think there is some confusion in the minds of many as to the meaning of section 20. It provides that the Civil Service Commission shall issue certificates to persons "as certified corporation representatives for the purposes of this act." My understanding is that such persons are not to be Federal employees, otherwise there would be some limitation placed upon the number of certificates issued. I take it that any person who is capable may receive such certificate. It provides that the certificates shall not be limited to attorneys at law and then it makes this provision "nothing in this act shall be construed to prohibit a person other than a certified corporation representative from acting as the proxy of a stockholder in any corporation."

In this connection, I refer again to paragraph (j) of section 5 in which specific provision is made for the delivery of proxies to such certified corporation representatives. If I understand this section 20 it will, in my opinion, serve as a convenient vehicle for unscrupulous persons who have received certificates from the Civil Service Commission to harass and annoy corporations. The purpose of it must be to make it more difficult for the management of a corporation to continue in control. I do not see how it is possible to accomplish any such purpose, if that be the purpose. The practice of most corporations when sending notices to its stockholders of a stockholders' meeting is to enclose with it a proxy made out in the name of persons who are in favor of continuing the management. Of course, under normal conditions it is comparatively easy for the management to secure such proxies.

The way to defeat the management is open to every stockholder who disagrees with it, but of course such minority stockholders are at a great disadvantage. It is only by canvassing the whole list of stockholders and by pointing out reasons for putting the management in new hands that there can be any hope of success in the ordinary case.

But for the life of me I can not see how it could be hoped that a certified corporation representative could be of any substantial assistance in this case. Certainly no stockholder would under ordinary circumstances trust a stranger with his proxy unless such stranger had a definite program which was disclosed to such stockholder.

I shall not discuss this section further because I am afraid I am entirely wrong with respect to my interpretation of it.

On March 3, Mr. Elmer T. Cunningham testified before this committee. Mr. Cunningham is a businessman of long experience. During his testimony Senator Borah made this observation:

Senator BORAH. Businessmen frequently complain about the antitrust laws, and say they do not know when they are violating them, and have asked for some kind of legislation through which they might be able to proceed without getting into court. I have always been of the opinion that the antitrust laws would practically accomplish that, but business people do not seem to like it done that way. At almost every session we hear complaints of the antitrust laws. They got what they wanted in the N. R. A., which was a further period of exemption

Members of the committee have complained from time to time during this hearing that they were receiving little or no help or suggestions from businessmen to cure evils that everybody agrees do exist. Since I am not a businessman, I do not suppose the committee would expect me to make suggestions. I have undertaken to analyze this bill and point out certain things which I think make it objectionable. I do think that on the whole it is very objectionable. I think it will do great injury to business which apparently is not now on the up-grade, to say the least. I think, speaking generally, most people agree that monopolies in restraint of trade are a bad thing for the country. Whether they exist to any such extent as some people believe, and that they are doing the injury many believe, I am not in a position to state.

As I analyzed this bill and read portions of the evidence, and read this observation made by Senator Borah above quoted, it occurred to me that I might make one suggestion that might be worth considering.

During the whole time I was in the Senate I heard the same complaint that Senator Borah refers to, viz, that businessmen do not know when they are violating the antitrust laws. I know of some instances that I can now recall where the fear of the violation of the antitrust laws prevented transactions that in my judgment would have been in the public interest.

My suggestion is this: I would strip this bill of the restrictions which I have criticized. I would not compel corporations to take out a license, but I would give corporations that are on the border line of monopolistic practices, and corporations which allege that they are handicapped by not knowing whether they are violating the antitrust laws or not, the opportunity to apply for and receive a license, just as this bill provides. That would mean that the Federal Trade Commission would pass upon what such corporations were doing, and what they were seeking to do. If the license were granted and the corporation had a new question that arose, I would provide that it should have opportunity to appear before the Federal Trade Commission and get its consent to this new venture.

If such corporations had this opportunity of saving themselves from being prosecuted under the antitrust law, and a vigorous prosecution were instituted against those who are clearly violating the law, there

would be real public sentiment in favor of such prosecution, and no sympathy expressed for those who were found guilty. It may be that no corporation would take advantage of such a law, but it seems to me we would, at least, by this method, close the mouths of those who have been making complaint, such as that so well described by Senator Borah. I am not certain that such a bill, providing on the one hand a license for those who are in doubt, followed by vigorous prosecution for those who did not heed the warning, would not be legislation in the right direction.

I should like to include in my statement, without reading, some extracts from synopses of Delaware decisions touching the construction of the Delaware corporation law by the courts of Delaware. I have picked them more or less at random, and for the purpose of showing the general expression in respect to what might be done under the general corporation laws of Delaware. Many of the bad things that could be done have been condemned by the courts, as shown by these following paragraphs, each one representing an extract from some opinion. I do not give the citations, because it seems to me that is not necessary, and my statement is already too long.

Senator O'MAHONEY. It may be incorporated in the record.

(The matter referred to is here set forth in full, as follows:)

CONSTITUTION

A bylaw conflicting with a charter provision is void; a charter provision conflicting with the statute is void; a statute conflicting with a constitutional provision is void.

RIGHTS OF STOCK

The nature and extent of preferences of stock are determined solely by the certificate of incorporation; a preference cannot be created or altered by a bylaw provision.

To determine the nature and extent of their preferences, stockholders need look only to the instruments required to be filed and recorded.

Stockholders cannot, even by a bylaw adopted by unanimous consent, override the provisions of the law requiring the rights of preferred-stock holders to be defined in the certificate of incorporation.

POWER OF DIRECTORS

Even if the board of directors of a corporation may remove a director for cause, such power cannot be exercised in an arbitrary manner, the accused director being entitled to be heard in his own defense.

As the law does not look with disfavor on the policy of securing to minority stockholders a right of representation on the board of directors, a director of an industrial corporation, being an officer chosen by the stockholders, cannot be removed by his fellow directors.

DIRECTORS' DUTIES

Directors stand in the situation of fiduciaries and are called upon in disposing of the property of the corporation (including its unissued par-value and no-par stock) to obtain prices which are for the best interests of the corporation and its stockholders.

Directors are not only bound not to profit personally at the expense of the corporation or its stockholders, but they must save them from loss.

PERSONAL PROFIT—CORPORATE STOCK

It was a fraud on a corporation and its other stockholders and a clear breach of trust for the active directors to vote to themselves, without consideration, sufficient stock to give them 51 percent of all the stock.

Acts of directors are scanned in the light of those principles which define the relation of trustee and cestui que trust.

An issue of stock authorized to be made by directors to another corporation which they own and of which they are the nominees to receive the issue will be regarded as having been made by the directors to themselves.

PERSONAL INTEREST OR ADVANTAGE

If a director acts for himself in matters where his interest conflicts with his duty to the corporation, the law holds the transaction constructively fraudulent and voidable at the election of the corporation.

ISSUANCE OF STOCK

A breach of trust on the part of directors consisting in their unlawfully issuing stock of the corporation to themselves is a matter recognizable in equity, by a suit for an accounting, and complainants are not remitted to an action at law for damages.

Stockholders have a right to assume that officers and directors will be faithful to their trust.

In issuing stock, directors are trustees for the corporation, and the stock must be disposed of in the interest of the corporation.

DIRECTORS—PAYMENT FOR SERVICES

Directors of a corporation are trustees for the stockholders and their acts are governed by the rules applicable to such a relation, which exact of them the utmost good faith and fair dealing, especially where their individual interests are concerned. They have no right to compensation for services rendered within the scope of their duties as directors, unless it is authorized by the charter, bylaws, or the stockholders of the company. They have no right to compensation for services rendered outside their duties as directors unless there has been an express contract to pay for such services, or, as some cases hold, unless the services were clearly outside their duties as directors and performed under circumstances sufficient to show that it was understood by the proper officers, as well as by the directors claiming compensation, that the services were to be paid for by the corporation. A contract to pay compensation for such services must be made with directors or other proper corporate officers who have no personal interest directly or indirectly in the contract, and who are competent to represent the company in the transactions.

Where directors subscribed for corporate stock, giving their notes in payment, and the notes were held by the company and paid in part from dividends, it was held that as the corporation was not authorized to issue stock for notes, and as the directors secured an unfair advantage over other stockholders, the contract may be set aside as fraudulent and the directors required to account for the fruits of their illegal acts, particularly as they took advantage of their present position of trust.

Directors are not entitled to vote themselves stock for organization services or for obtaining subscriptions to stock under the constitutional provision as to issuance of stock for labor done, since the directors are incompetent to value their own services.

PREFERENCE RIGHTS

As soon as a preferred cumulative dividend is matured by time, though unpaid and undeclared, the right of the stockholder to its ultimate payment as against junior stockholders becomes a vested right.

The nature and extent of preferences of stock are determined solely by the certificate of incorporation; a preference cannot be created or altered by a bylaw provision.

To determine the nature and extent of their preferences, stockholders need look only to the instruments required to be filed and recorded.

Stockholders cannot, even by a bylaw adopted by unanimous consent, override the provisions of the law requiring the rights of preferred stockholders to be defined in the certificate of incorporation.

STOCK IN GENERAL

The authority of a corporation to issue stock is fixed by the law of the State which grants the authority, and neither the incorporators nor any other officers can change, modify, or supplement the law in that regard.

LABOR DONE

Under constitution, article 9, and section 14 of the general corporation law, stock cannot be issued for promotion services performed before incorporation or work to be done in the future.

An agreement to render future service to a corporation is not lawful consideration for the issuance of stock.

Consideration for the issuance of stock consisting of services rendered in the promotion and organization of the corporation and services to be rendered in the future is not lawful under the constitutional and statutory provisions.

PROPERTY AND LEASES

Stock in a corporation was issued for property never delivered to the company and the issue was ratified by the directors. Held contrary to constitution, article 9, section 3, and General Corporation Act, section 14, and unlawful and ultra vires, and might be questioned by other stockholders, in a bill for cancelation of such stock.

The assignment to the company of a plan of doing business by which prospective purchasers of automobiles were to be assisted in buying and paying for them, the company making the purchase and holding title until the purchase money was paid in full, did not under constitution, article 9, section 3, and this section constitute a valid consideration for stock issued as fully paid and nonassessable.

PROMISSORY NOTES

The requirement of the constitution (art. 9, sec. 3) as to the consideration for which stock may be issued as full paid contemplates the production of the thing itself, and not the mere promise to produce; a promissory note of the subscriber is not "money paid," nor is it "property actually acquired"; hence it is not legal consideration for the issuance of full-paid stock.

The purpose of the constitutional requirement as to the consideration for which stock may be issued as full paid is that the capital of Delaware corporations shall consist of substantial assets, for the protection of both creditors and stockholders.

JUDGMENT OF DIRECTORS—FRAUD

Section 14 contemplates a valid exercise of judgment as to value of labor performed; and directors, being incompetent to value their own services, cannot vote themselves stock for services, as for "labor done."

PREEMPTIVE RIGHT

The preemptive right of a stockholder to subscribe for his proportionate share of new stock obtains in Delaware, but there may be exceptions where no injury is done to existing rights.

The right of preemption is not, except within narrow limits, an absolute rule of law. It seems that under modern conditions, it will be applied by disregarding legal dogma and merely asserting an equity jurisdiction to hold, in respect of the facts in each case, directors and stockholders to a high standard of reasonableness and fairness in issuing new shares.

The preemptive right of stockholders of a corporation to subscribe for new shares issued by the corporation in preference to outsiders is well established.

RIGHT TO VOTE

A bylaw that restricts or alters the voting power of stock of a corporation as established by the law of its charter is void.

A charter provision that "the sole voting power shall reside in the holders of the common stock" held not to prevent the preferred stock from being voted when there is no common stock legally issued and outstanding.

FUNDS AVAILABLE FOR DIVIDENDS

Dividends can be legally paid by a corporation not in liquidation only from surplus or net profits, and not from capital.

A corporation has only such power to declare and pay dividends as the law and its charter gives it. Where the law under which the corporation is organized contains a specific grant of power to pay dividends, such grant contains the full measure of the power, and it has no other or greater power in that regard.

Irrespective of statute, in general, corporations may declare dividends only from profits, which means that their invested capital may not be distributed.

RIGHT OF STOCKHOLDERS TO DIVIDENDS

As soon as a preferred cumulative dividend is matured by time, though unpaid and undeclared, the right of the stockholder to its ultimate payment as against junior stockholders becomes a vested right.

RECEIVERSHIPS

Corporation, though insolvent, should not be thrown into receivership on application of stockholders who would obtain no benefit therefrom and would injure creditors not demanding payment.

Mr. HASTINGS. I thank you very much for the privilege of appearing before the committee.

Senator O'MAHONEY. Senator Borah, have you any questions?

Senator BORAH. I believe not.

Senator O'MAHONEY. Senator Austin?

Senator AUSTIN. No.

That statement is so comprehensive that there is not much left to inquire about.

Senator O'MAHONEY. Senator Hastings, I was very much interested to hear you say in so many words that a corporate charter is a contract between the corporation and the State issuing the charter. Of course, that is a well-known fact and an elementary proposition that probably is not always clearly understood.

Mr. HASTINGS. Yes.

Senator O'MAHONEY. Do you feel, as some of us feel, that is so, and since the Federal Government is the only Government which has jurisdiction over interstate commerce, it is either necessary or proper that the Federal Government should write that contract?

Mr. HASTINGS. I do not think it makes a bit of difference in the world who writes it, for this reason: That corporation incorporated in one State under a general corporation law has got to comply with the corporation law of every State in which it does business, and I believe that would be true if that charter were taken out under a law created by the Congress, with possibly a few exceptions where they are purely interstate corporations and do not do any local business. But, speaking generally, I think that would be true.

Senator O'MAHONEY. When you say "it must comply with the corporation law in each State in which it does business," you do not mean that it is necessary for a foreign corporation—and by that I mean a corporation organized in another State—must reorganize in every State?

Mr. HASTINGS. It has got to comply with the laws of that particular State which provides under what conditions a foreign corporation can do business in that State.

Senator O'MAHONEY. In other words, it accepts the constitution of the State?

Mr. HASTINGS. It complies with the law and conditions that have been imposed upon foreign corporations.

Senator O'MAHONEY. Its corporate structure is not affected at all?

Mr. HASTINGS. Not at all.

Senator O'MAHONEY. If there were no provision in the charter by which the rights of investors are properly protected, the mere fact

that a corporation is engaging in business in a State would make no difference with respect to that particular point, would it?

Mr. HASTINGS. If I understand this bill, you are undertaking to correct an evil that grows out of charters issued under general corporation laws. You can readily do that. You can do it quite as readily as if it were created by act of Congress. You have control of the situation, if the corporations are engaged in interstate commerce. It makes no difference whether they are incorporated under the law of the State of Delaware or a law created by Congress. You still have the same control you would have if it were a Federal corporation.

Senator O'MAHONEY. Do you think it is undesirable for Congress to undertake to prevent these practices, which everybody admits at one time or another have been open to abuses?

Mr. HASTINGS. Well, of course, everybody knows that we must constantly be studying and trying to meet the fellow who is trying to do something crooked. We must study the situation and see whether or not we can stop him by some general law which will not at the same time injure somebody who is doing a legitimate business. That has been the struggle ever since we began, and it continues to be the struggle, and there will always be a difference of opinion as to whether the thing we may attempt to do will do greater harm than the evil which you are trying to correct. That is exactly what you are faced with here.

The best illustration of that, I think, is the one in which you specifically provided that every stockholder shall have the same right to vote. In some instances you will accomplish something with it. I have had instances called to my attention where I wished to heaven that were true. It is difficult for the courts to do anything with it, but I insist that if you adopt that rule you are doing as much harm to those corporations that are trying to conduct a legitimate business as to those that are not. I say you will do as much harm, and I believe you may do even greater harm. That is a matter of opinion, of course, but that is my judgment with respect to it.

Of course, speaking generally, nobody can complain of the Congress for trying by legislation to correct evils. I merely point out that when you are trying to correct evils you must be careful to see that you do not do harm to legitimate business.

Senator O'MAHONEY. Let us look at one particular provision of this bill, to which you do not seem to take any serious objection. That is the provision with respect to the payment of bonuses without approval of the stockholders. Can you say whether or not, under the Delaware law, the management of a corporation may now pay bonuses without the vote of the stockholders?

Mr. HASTINGS. I should think so.

Senator O'MAHONEY. May the management pay themselves a secret bonus?

Mr. HASTINGS. I do not know what you mean by "secret" bonus. It cannot pay a bonus that is a fraud.

Senator O'MAHONEY. Let me give you an example that was furnished to me by the Federal Trade Commission. The bonus payments to the Bethlehem Steel Corporation began in 1917, which were paid to from 8 to 10 persons in the beginning, and finally reached the number of 21. From 1925 to 1928 no dividends were paid to the

owners of the corporations, but Mr. Grace, who was the head of the corporation, received \$3,200,000 in bonuses during these years. In the 13 years from 1918 to 1930 the bonuses paid to Mr. Grace amounted to \$814,933 per year. During that period and up to the close of 1928, there were taken out of the corporate treasury bonus payments in the amount of \$31,878,255 as against \$40,886,996 paid to the common stockholders, the bonuses being 80 percent of the amount paid to the owners of the corporation. Do you think it would be undesirable for the Federal Government to undertake to prevent the possibility of such payments?

Mr. HASTINGS. Perhaps not, but may I respectfully add that you have not cured that situation by this bill.

Senator O'MAHONEY. Can you suggest how we can cure it? The people who do that sort of thing are in control of the corporation, and the stockholders would have approved whatever they suggested. You have not in this bill, in my judgment, cured one case out of a thousand by that provision. So far as the business world is concerned, that would be doing less harm than anything you have in section 5, in my judgment. I think there is no argument on that. It merely means calling a stockholders' meeting to vote on the proposition. But the provision I speak of, if that were the only objection I had to the bill, I should pass it over and not even come.

Senator O'MAHONEY. I realize that is probably true. How about the antitrust laws? Do you feel, like all the witnesses who have appeared before us, that they should be enforced?

Mr. HASTINGS. Yes, I do.

Senator O'MAHONEY. Have you any suggestions to make to the committee as to how we can bring that about?

Mr. HASTINGS. I made one which I suppose you are all familiar with, and perhaps it is not worth very much. I have often wished that we had some kind of law that would make it so certain that nobody would have any doubt whether a corporation was violating the antitrust laws or not. I remember a particular instance where a corporation wished to take a certain action which, in my judgment, would have been fine for the country. It could not be done, because of the antitrust laws. I do not think it would have violated the law, but those people were afraid. They were trying to live up to the law. If they could have gone somewhere and had somebody pass upon that and approve it, and when they gave their approval put that corporation in a position where they could watch it and not let the approval be turned into a license, it would have been a fine thing.

Senator BORAH. That would be Government control of business, of which you are complaining.

Mr. HASTINGS. Oh, yes. If a concern is so anxious to do a certain thing which is so close to the line of violating the law, then it should either put itself under the control of the Government or not do the thing.

Senator O'MAHONEY. Do you not think it is possible for us to develop some sort of a Federal corporation law which will make unnecessary, both the meddling about which you complain in this bill, and the interference which would be inevitable under the plan which you suggest, so that by merely complying with the rules which the Federal Government through Congress lays down, the management of corporations will have no fear of the results?

Mr. HASTINGS. Senator O'Mahoney, that is what attracted my attention to Professor Ripley's statement. He gave instances of what appeared to be very bad things that were being done by corporations, but there is not a single thing that he suggested that is due to the general corporation laws of any State that I know anything about. It was just because somebody was crooked.

Senator O'MAHONEY. Due to the frailties of human nature?

Mr. HASTINGS. It is a little worse than frailties, I think. I guess they are frailties, but they are more than that. They are people with a crooked trend of mind.

Senator O'MAHONEY. In connection with the last suggestion of yours, I want to read into the record a statement made by former Senator John Sharp Williams in 1911. You recall, of course, that Senator Williams introduced a bill which embodied a good many of the features of this bill. With respect to the suggestion which you have made, and which has been made by some others, I call your attention to what Senator Williams said:

I can imagine nothing more dangerous to the American Republic than control of great corporations by a Federal bureau, subject, in its turn, to a political administration of either party, excluding or admitting participation in business substantially at the whim and caprice and by the favoritism or enmity of the head of the bureau, influenced by Senators, speakers, and Presidents, whose "pull" would be in favor of "good trusts" and whose frowns would be for "bad trusts." In such a case "good" would come to mean subservient. The remedy is to exclude trusts from interstate commerce, but to exclude them not by the fiat of a bureau, which in the last analysis is a man influenced by other men and acting secretly, with subordinates forbidden to give out information, but to exclude them by fiat of law, providing that corporations having charters conferring powers broad enough to establish monopoly or near monopoly and unlimited in the interest of the public shall be excluded.

There in a few words is set forth the principle which was expressed by Senator Williams before we began our study of this bill.

Mr. HASTINGS. The point is that no corporation engaged in monopolistic practices shall be permitted to operate?

Senator O'MAHONEY. Yes.

Mr. HASTINGS. I agree with that. The question is how to do it.

Senator BORAH. That is the question to which we are trying to find the answer.

Mr. HASTINGS. Yes.

Senator BORAH. You do agree that people engaged in monopolistic practices should not be permitted to enjoy the channels of interstate commerce, do you not?

Mr. HASTINGS. In any form.

Senator BORAH. I am glad to hear you say that.

I feel some gratification, regardless of what may come from it, in the fact that the antitrust laws have again come into fine repute with the business people, who are now coming before this committee and expressing themselves as being strongly in favor of the enforcements of those laws. You know as a Senator that there was a constant and almost universal demand for years that they be repealed. So we have really reinstated the antitrust laws.

Mr. HASTINGS. I think they should be enforced. I should like the record to show that I do not appear here representing anybody, and that I came because you were good enough to ask me to come.

Senator O'MAHONEY. You came upon invitation.

Mr. HASTINGS. Yes.

Senator O'MAHONEY. I wanted Delaware to have the defense that you would give it.

Mr. HASTINGS. Thank you very much for the privilege of appearing.

Senator O'MAHONEY. The committee will stand in recess until next Tuesday at 10:30, at which time Mr. Clark, of Texas, will be heard, as well as other witnesses mentioned in the discussion off the record.

(Whereupon, at 12 o'clock noon, a recess was taken until Tuesday, March 22, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

TUESDAY, MARCH 22, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to recess, in room 318, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman) presiding.

Present: Senators O'Mahoney (chairman), Borah, and Austin.

STATEMENT OF HON. EDWARD CLARK, SECRETARY OF STATE OF THE STATE OF TEXAS

Senator O'MAHONEY. Mr. Clark, you may proceed. First give your name to the reporter.

Mr. CLARK. My name is Edward Clark. I am secretary of state of the State of Texas.

Senator O'MAHONEY. You may proceed with your statement.

Mr. CLARK. As secretary of state of the State of Texas, I respectfully appear on behalf of that State in opposition to the Federal licensing bill now under consideration by this committee. We are greatly concerned as to the effect of the proposed measure upon the corporate laws and practice of the State. Texans have demonstrated on more than one occasion that they are, by nature, rather independent. I may as well be frank. We do not like to be regulated or controlled by anyone, most especially some Federal agent with an order, rule or regulation in his hip pocket which he says is authorized on account of some law which Congress might have passed.

Senator O'MAHONEY. Are there not a number of oil companies or oil businesses in Texas that are pretty well regulated by the big oil companies?

Mr. CLARK. I think they are rather well regulated by our State railroad commission, Senator.

We would like by your consent to be let alone and permitted to run unmolested what modest little business an all-wise, all-beneficent Providence has bestowed upon us. It seems to me quite impossible to equalize opportunities and natural resources between the various States. To attempt this might upset a plan long in operation.

I am taking the position generally that the present bill is an unjustifiable intrusion of Federal authorities in matters which of right belong to the several States.

With the exception of the farmer, I am pleased to state that in Texas money is rather plentiful and business is prosperous, particularly one of our major industries—oil. In this connection it will be

remembered that it was only 2 or 3 years ago that the hue and cry went up and out from one of your numerous departments in Washington that there must be, in order to save the country, Federal control of the oil industry.

It so happens that our Senators, Representatives, oil men, big and little, good and bad, were all opposed to turning our oil over to some agency away up here in Washington. It is indeed remarkable that the oil industry is so prosperous and sound in Texas in spite of our refusing the volunteer services of a certain person who wished to regulate our oil business.

Of course, I do not come here to question the authority of Congress to regulate interstate commerce. Texas, however, does have a motherly as well as a more or less financial interest in the corporations she has created or extended the sisterly hand of welcome to do business within her confines. Surely Texas never anticipated, consented to, or now desires that such corporations may now be converted into instrumentalities of the Federal Government.

I think the State of Texas is today bound to use every power at her command to continue to preserve and protect and, so long as a corporation abides by our own peculiar brand of "law and order," to keep the faith with that corporation that for so many good causes entered in a relationship with our State. Unless we do that we surrender our sovereignty and find ourselves completely devoid of public policy.

From reading the transcript of what has been said before this committee is these hearings it would appear to me that the allegation has been made either during or by intimation that those seeking to form corporations look for the State whose corporate laws are most lax.

I cannot agree with any such allegation.

The record shows that Texas has been the magnet that has drawn many individuals and groups wishing to form corporations both in production, mining, and manufacturing and I want this committee and the world to know that the corporate laws of Texas are far from lax. In fact, our strictness, stringency and enforcement I will match with the laws of any State anywhere.

So that the committee may be informed as to the exact requirements of the corporate laws of Texas and to explode the foolish theory that lax corporate laws attract such business, I wish your permission, gentlemen, to give you a brief and simple statement covering generally the corporation laws of Texas, penalties provided for the violation, including antitrust laws, together with studies of revenues received by the State for corporate fees, filing fees, and franchise taxes.

DOMESTIC CORPORATIONS—CREATION

The Constitution of the State of Texas prohibits corporations being created in the State except by general laws. The Legislature of Texas has enacted general laws to be administered by the Secretary of State which provides for the creation of private corporations and, in accordance with the mandate provided in the constitution, have provided for the adequate protection of the public and of the individual stockholders. Article 1302 of the Revised Civil Statutes of Texas, 1925, as amended, provides for more than 100 separate and distinct purposes for which a private corporation may be formed, but

a corporation can only be formed for one main purpose as is authorized by one subdivision of said article, except in those instances where a particular subdivision authorizes a corporation to be formed for more than one purpose.

Our legislature has provided other specific types of corporations than those enumerated in article 1302, namely, railroads, banks, insurance companies, farmers' cooperative societies, farmers cooperative marketing associations, rural credit unions, agricultural and livestock pools, agricultural finance corporations, mutual loan corporations, cooperative credit associations, and Morris Plan Banks, but with the exception of the laws pertaining to banks and insurance companies the administration of all the corporation laws is placed in the hands of the secretary of state. Of course, the business of the latter named corporations is regulated by other governmental agencies, but the laws pertaining to the creation of the corporations and the continuance of the franchise exercised by them are administered by the secretary of state.

As to the specific types of corporations, the legislature has provided different means of organization and regulation for the protection of the public and the individual stockholders, but by virtue of constitutional as well as statutory provisions, all private corporations are subject to a common regulation, and that is "no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness" is void. The other regulatory provisions hereinafter discussed apply only to ordinary corporations.

A private corporation may be formed by three or more persons, two of whom must be citizens of the State of Texas. If the corporation has shares of stock of a par value, it is necessary for all of such stock to be subscribed and at least 50 percent paid in in the manner hereinabove mentioned. The proof of payment of the paid-in capital stock is required to be furnished by affidavit executed by the persons who execute the charter which is presented to the secretary of state for approval and filing. The stockholders are given 2 years in which to pay in the unpaid capital stock and make proof of the same to the secretary of state. When this provision is not complied with, the secretary of state summarily forfeits the charter of the corporation, but the corporation has 6 months from the date of the forfeiture within which to pay in the unpaid part of the capital stock upon the payment of certain penalties; otherwise the forfeiture becomes final. The same rule applies to any unpaid portion of an increase of capital stock.

The secretary of state is given the discretionary power of determining whether property used in payment for capital stock or labor received by a private corporation in payment for capital stock constitute sufficient consideration for the issuance of shares of stock in the corporation.

Senator AUSTIN. Will you permit a question at this point?

Mr. CLARK. Yes.

Senator AUSTIN. Mr. Chairman, may I ask a question?

Senator O'MAHONEY. Yes.

Senator AUSTIN. How is the issue raised? Is it by an affidavit filed by the incorporators of their intention to issue stock for the property which the affidavit claims is worth so much money?

Mr. CLARK. Yes.

Senator AUSTIN. And thereupon you have a hearing?

Mr. CLARK. The matter is investigated, and if the secretary is satisfied as to the value then he approves the increase.

Senator AUSTIN. Let me ask you another question.

Mr. CLARK. Yes.

Senator AUSTIN. Do you give public notice?

Mr. CLARK. No; no notice is provided for.

In this respect, it has been the policy of my administration to require that the market value of property used in payment for capital stock in a domestic corporation be established by an independent appraisal of such property by qualified persons or firms, and as to real property to also furnish a report showing an examination of the title to such property. This report is of course required to show that the corporation will have a good fee simple title to such real property after acceptance by the corporation in payment for capital stock.

Term: A private corporation can only have succession by its corporate name for a period not to exceed 50 years, but a law was enacted at the regular session of the Forty-fifth Legislature which authorizes the term of existence of a corporation to be extended for an additional period of 50 years provided such extension is made with a period of 10 years prior to the expiration of its charter.

Increase of capital stock: A private corporation is permitted to increase its authorized capital stock when empowered to do so by at least a two-thirds vote of the outstanding stock of the corporation with voting privileges, providing the necessary amendment is filed with the secretary of state. The stockholders at the time of the increase necessarily have the preference to subscribe to and purchase the increase of stock unless such preference is waived by express agreement or charter provision.

Decrease of capital stock: The decrease of capital stock may also be effected by a two-thirds vote of the outstanding stock with voting privileges. The law provides that such a decrease shall not prejudice the rights of any creditor of the corporation or any stockholder, and proof of this fact is required to be made to the secretary of state before he is required to approve such a decrease.

Directors: A private corporation may have any number of directors, not less than three. The directors for corporations organized for profit or mutual benefit can only be elected for a period of 1 year. The directors in addition to having the responsibility of the general management of the corporation must keep a record of stock ownership and business transactions. These records must be kept open at all reasonable times to any stockholder.

With the exception of banking and railroad corporations, the director or officer of a Texas corporation is not required to own stock in the corporation.

Dividends: Dividends may be declared by the directors of a corporation but only out of the actual earnings of the corporation. This is true of both cash and stock dividends.

Senator AUSTIN. Just a moment. May I interrupt you again?

Mr. CLARK. Yes.

Senator AUSTIN. Do you ever have an attempt made by corporations organized under the laws of Texas to pay dividends out of paid-in surplus?

Mr. CLARK. No such action has ever been called to my attention since I have been secretary of state. I have heard of that being done, but not official.

Senator O'MAHONEY. Do you mean by Texas corporations?

Mr. CLARK. Yes. That particular case was, I think, a mutual insurance company that I understand sold that stock.

Senator O'MAHONEY. Is it permissible, did I understand you to say?

Mr. CLARK. No; that is a violation of the law.

Senator O'MAHONEY. You may proceed.

Mr. CLARK. Stockholders and directors' meetings. All stockholders' meetings of Texas corporations are required to be held within the State, and the Supreme Court of Texas has specifically held that proceedings had at a meeting of the stockholders outside of the State of Texas are void.

The directors' meetings may be held at any place decided upon by the board of directors whether within or without the State of Texas.

Non-par-value stock: Corporations organized under the laws of this State may provide for the issuance of shares of stock without nominal or par value. It is necessary for at least 10 percent of the authorized shares without nominal or par value to be subscribed and paid in, provided that the corporation must have a minimum paid-in capital stock of not less than \$25,000. The corporation is of course subject to the same limitation with respect to the consideration to be received by the corporation for such shares of stock as has been hereinabove enumerated for par value shares, but the stockholders are not required to pay in within any certain period any unpaid portion of shares without nominal or par value which have been subscribed.

Classes of stock: The domestic corporations of my State are permitted to issue voting and nonvoting stock. As a general practice, the common stock comprises all of the voting stock, and the preferred stock comprises the nonvoting stock. In the latter case, a preference is given the holders of the stock as to dividends as well as a preference or lien upon the assets of the corporation in the event of liquidation in lieu of the right to vote in the management of the affairs of the corporation.

Consolidation of corporations: No provision is made for the consolidation of domestic corporations with the exception of corporations created for the support of benevolent, charitable, educational, or missionary undertakings, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music, or other fine arts, and only when the charters of such corporations have expired by limitation.

Ownership of stock by a corporation: The general rule is that the charter of a corporation is to be strictly construed against the corporation and in favor of the public, and that the corporation should always show a plain and clear ground for the authority it assumes to exercise. It seems, therefore, well settled that where a charter confers upon a corporation the right to do a business which does not include the purchase and sale of stock in another corporation as a part of its main business, the corporation is precluded and without any right to invest its funds in the stock of another corporation, even though such corporation may be engaged in the same line of business. Even in those instances where a corporation is authorized by its charter to own stock of another corporation, it is prohibited by law from doing

so if such ownership would constitute a violation of the antitrust laws of this State.

Fees: The Secretary of State is required to collect for filing each charter, amendment, or supplement thereto of a private corporation intended for mutual profit or benefit a filing fee of \$50 for the first \$10,000 of its authorized capital stock and \$10 for each additional \$10,000 or fractional part. Exceptions are made with respect to specific types of corporations, but the vast majority of corporations are subject to this rule.

FOREIGN CORPORATIONS

Procedure to obtain permit: All foreign corporations organized for pecuniary profit and desiring to do business in the State of Texas are required to file a certified copy of their articles of incorporation and to obtain a permit to do business in this State. A foreign corporation making application for permit to the Secretary of State is required to designate the specific purpose of the business it desires to transact in Texas and to make proof of the fact that at least 50 percent of its authorized capital stock has been in good faith subscribed and 10 percent paid in upon the same basis as in the case of domestic corporations, or \$100,000 paid in cash. The officers of the corporation are also required to furnish an antitrust affidavit stating in effect that the corporation is not a trust or organization in restraint of trade in violation of the laws of this State and has not within 12 months next preceding the making of the affidavit been a party to any trust agreement of any kind which would constitute a violation of the antitrust laws existing at the time of such affidavit, and further that within said time it has not entered into or been in anywise a party to any combination in restraint of trade within the United States, and further that no officer of the corporation has within the knowledge of the person executing the affidavit made any such contract on behalf of the corporation or entered into or become a party to any such combination in restraint of trade.

Tramp corporations: The Secretary of State is not authorized to grant a permit to corporations which come within what is known as the "tramp corporation rule." This rule as applied to Texas includes those corporations which are organized under the laws of another State by citizens of this State for the purpose only of transacting business in this State and with no bona fide intention of transacting business in the State from which the charter was obtained or in any other State.

Powers: Foreign corporations which obtain permits to do business in the State of Texas are authorized by law to have and to enjoy all of the rights and privileges conferred by the laws of this State or domestic corporations, but foreign corporations cannot exercise any rights, privileges, powers, and immunities which are not granted to corporations organized under the laws of this State.

A foreign corporation is authorized to own stock in a Texas corporation even though it does not have a permit to do business in the State of Texas, and may vote such stock and participate in the management and control of the business and the affairs of the Texas corporation subject to the laws of this State.

Operating without a permit: A foreign corporation which transacts business in the State of Texas without a permit is subject to a penalty of not less than \$100 nor more than \$5,000 for each month or fraction thereof it shall transact business without a permit, such penalty to be recovered by suit at the instance of the attorney general. The State has a lien on all of the property of the corporation for said penalty.

Fees: Upon obtaining a permit and upon filing certified copy of any amendment or supplement to the charter of a corporation, each foreign corporation is required to pay to the Secretary of State a fee of \$50 for the first \$10,000 of its issued capital stock employed in Texas and \$10 for each additional \$10,000 or fractional part. The fee basis is therefore placed upon a parity with corporations organized under the laws of the State.

DOMESTIC AND FOREIGN CORPORATIONS

Ownership of land: Neither a foreign nor a domestic corporation is permitted under the laws of our State to have for its main purpose of business the acquisition or ownership of land by purchase, lease or otherwise. A domestic corporation is permitted to own such land as may be necessary for its office, and a foreign corporation is specifically authorized to own, purchase, sell, mortgage, and otherwise convey such real estate and personal property as may be necessary to conduct its business. However, a foreign corporation is required to alienate all real property so acquired not necessary for its purpose within 15 years from the time of acquisition and is required to alienate all such real estate within 15 years after it shall cease to carry on business in Texas and is required to alienate all property within 15 years, after the expiration of the time for which its permit has been issued.

Antitrust laws: The antitrust laws of Texas prohibit a foreign or a domestic corporation being a party to "trusts," "a monopoly," or "conspiracies against trade," and severe penalties are provided for corporations found guilty of violating such antitrust laws as well as any person, employee, agent, stockholder, or officer who shall do or perform any act of any character to carry out such trust, monopoly, or conspiracy in restraint of trade. The property of such corporations is liable for any fines and penalties assessed against the corporation and for cost of suit and collection. This is also true of any other violation of the laws for which a fine or penalty has been assessed.

Senator AUSTIN. Before you pass from the antitrust laws I want to ask a question. You have an antitrust law, I understand, down there.

Mr. CLARK. Senator, I think it is generally admitted that probably the antitrust laws of Texas are the most stringent of any State in the Union.

Senator AUSTIN. Do you have enforcement of them?

Mr. CLARK. Yes; we have been throwing our hats at them as they went by.

Senator O'MAHONEY. But they went by.

Mr. CLARK. They have not all gone by, but we have had a little trouble holding them. We have a suit pending in court, pending in the trial court now, against 17 major oil companies, seeking an assessment of something over \$17,000,000 against the oil companies.

They entered into what they called a code of ethics, a fair trade agreement. The attorney general of our State got after them and brought them up to law. About the time he got started there was a ruling from the Federal Trade Commission that all that monkey-business they had been doing had been approved by the Federal Trade Commission before they started. That gave us a little setback, and then the N. R. A. came along, and the trial judge held that superseded our law. We appealed to the Supreme Court, and they held out antitrust laws were all right and told the attorney general to go after them.

Senator AUSTIN. Was that the Supreme Court of the United States? Mr. CLARK. No. That was the Supreme Court of Texas.

About 2 weeks ago our attorney general filed another antitrust suit claiming \$32,000,000 against the Cement Trust. We are doing the best we can. We have some other suits against the Standard Oil Co. Our record is pretty good. We have got some coonskins nailed up on our doors from antitrust prosecutions.

Attorney general: The attorney general of the State of Texas is by constitutional provision given authority to "inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power" now authorized by law, and, whenever sufficient cause exists, to seek a judicial forfeiture of a charter or permit of a private corporation. He may in the exercise of this duty inquire into the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and bylaws, and other records of the corporation. Failure of the corporation to submit to such examination is sufficient cause for forfeiture of its right to do business in this State and for cancelation and forfeiture of its permit or charter.

Insolvent corporation: Our laws prohibit an insolvent corporation from exercising any franchise in the State. The attorney general may, upon his own initiative or upon request of at least 25 percent of the stockholders of the corporation or at least 25 percent of the creditors of the corporation, file a suit to forfeit the charter or permit as the case may be.

Franchise tax: The only tax levied against corporations by the State of Texas is the annual franchise tax which is assessed under the provisions of chapter 3 of title 122, Revised Civil Statutes, 1925, as amended. Both foreign and domestic corporations are subject to the same rates under the provisions of this chapter. The tax is based upon the capital employed in Texas and the rates are uniform within the classes provided by the statute. The amount of capital employed by the corporation is determined by reference to the capital stock, surplus, and long-term indebtedness and the allocation is made upon the basis of business done in Texas in order to avoid any trespass upon interstate commerce.

Under the existing franchise-tax law the tax accrues against all corporations organized under the laws of the State of Texas not exempt by some special provision of the statute, and against all foreign corporations holding permits to do business in Texas which are not exempt under some special statutory provision. It would necessarily be true that any corporation organized under the laws of some jurisdiction other than the State of Texas and which the State of Texas

could not require to obtain a permit to do business in Texas would be exempt from the tax, as the obtaining of the permit is a condition precedent to the payment of the tax.

Number of corporations doing business in Texas: Since the passage of the general statute providing for the issuance of permits to do business in Texas to foreign corporations and charters to domestic corporations by the secretary of state of Texas, there have been granted approximately 73,000 domestic charters and approximately 6,000 foreign permits. A great many of these corporations have been dissolved or liquidated, but at the present time, including corporations exempt from franchise tax, there are 24,417 corporations doing business, or authorized to do business in Texas. This includes 21,538 domestic corporations and 2,879 foreign corporations. Of this number approximately 500 are agricultural corporations or corporations formed for the purpose of buying and selling livestock. (This includes cooperative marketing associations and other forms of cooperatives.)

Comparison with other States: During the last several sessions of the legislature the office of the Secretary of State has had occasion to inquire as to the number of corporations doing business in the various other States of the Union. It appears that Texas is well above the average both as to domestic and foreign corporations and that the number of corporations doing business in Texas far exceeds the number doing business in any other State in the South.

Franchise tax collections: Corporate franchise tax collections and filing-fee collections for the past 4 years have been as follows:

	1934	1935	1936	1937
Domestic tax.....	\$1,357,001.79	\$998,100.89	\$1,072,018.47	\$930,513.64
Foreign tax.....	823,761.88	474,542.37	472,261.43	501,700.15
Fenalties.....	53,392.05	28,719.99	40,684.66	42,665.21
Domestic filing fees.....	117,147.78	135,869.50	140,700.04	157,000.00
Foreign permit fees.....	56,852.50	51,592.00	66,230.13	88,823.00
Total.....	2,408,156.00	1,688,824.75	1,791,894.68	1,720,702.00

The total collections for the 4 years as set out above amount to \$7,609,577.43.

Corporations with assets in excess of \$100,000: According to the records of the office of the secretary of state there are approximately 1,173 Texas corporations with assets of \$100,000 doing business in Texas, and there are approximately 1,345 foreign corporations with assets of in excess of \$100,000 qualified to do business in Texas. According to the estimates of those most familiar with the franchise tax collections for the past several years, about 50 percent of the total collections from franchise taxes and filing fees is derived from corporations with assets in excess of \$100,000. In other words, if corporations with assets in excess of \$100,000 are exempt from the Texas franchise law, collections from this source by the State of Texas will decrease approximately \$750,000 per year. This 50-percent estimate is very conservative, as it is entirely probable that collections from the larger corporations will run in excess of 50 percent of total collections.

Allocation of revenue from franchise tax: All of the revenue received from corporate filing fees and franchise taxes is deposited to the credit of the State's general revenue fund in which there is an existing deficit of approximately \$15,000,000. In the event this annual revenue of three-quarters of a million dollars is lost to the general revenue fund it must necessarily be made up from some other source.

Senator AUSTIN. Do you mean annually?

Mr. CLARK. I mean annually. That little fund we put it in has a deficit of nearly \$15,000,000, and we can't stand it at this particular time.

Senator O'MAHONEY. What provision of this bill would deprive the State of Texas of the right to issue charters?

Mr. CLARK. Just this: When they take out a Federal permit then they come around to me and say, "Son, we are an instrumentality of the Federal Government. You can't put a burden on interstate commerce. We are not going to pay you anything."

That is what the Texas & Pacific told me years ago. They got a Federal charter, and they wouldn't pay a franchise tax, and we couldn't do anything about it.

Senator O'MAHONEY. Where did they get the Federal charter?

Mr. CLARK. They have had it for 85 years by an act of Congress. I think it is the only railroad in Texas, I am glad to say, that has got one of them. I would estimate the number of corporations that we have with total assets of over \$100,000 as being about 3,500. We have created 73,000 corporations in Texas, and only 6,000 had permits to do business.

I object to the proposed sweeping addition to the commonly accepted definition of "interstate commerce" under the new terms of "commerce." In this bill the definition given commerce generalizes on the relationship between production and commerce so as to assert Federal control over local production without even the findings of fact on the part of an agency created by Congress to be made in each particular case. And, too, as to investigations and hearings and findings of fact must show the direct effect of practices in production on interstate commerce.

I think such definition contemplates not only the regulation of large corporations engaging in interstate commerce but also seeks thereby to regulate production in purely local business where the assets have exceeded \$100,000 at any time within the past 3 years.

The declaration of policy in the bill seeks to have Congress make findings of fact which are, I think, misleading in that conclusions and matters of real controversy are stated as facts. Throughout such findings of fact and declaration of policy, although an effort is made to disguise the real intent of the bill, it becomes evident that the measure seeks to control production, mining, manufacturing, local business, and trade, rather than to regulate commerce.

I suppose it will be admitted by some of those who support the measure that they realize that Congress may not pass legislation designed to control production, manufacturing, and local trade and even certain phases of agriculture and livestock raising within the sovereign States. They must just as frankly admit that it would be necessary in the declaration of policy to have Congress find as a fact that the bill seeks to regulate commerce although the real intent may be to control mining, manufacturing, and local industry generally.

This is but seeking a legal way to do an illegal act. The courts will not be fooled by any such subterfuge. The mere fact that Congress makes a finding of fact and declaration of policy is not binding and conclusive upon the courts.

The Supreme Court has in the past adopted a policy of looking beyond the recitation of fact in an act of Congress.

Such declaration of policy justifies the application of the principle announced by Chief Justice Marshall in *McCullough v. Maryland* (4 Wheat., 316), in a much-quoted passage:

Should Congress in the execution of its powers adopt measures which are prohibited by the Constitution, or should Congress under the pretext of executing its powers pass laws for the accomplishment of objects not entrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land.

Thus we see that even though the declaration of policy contains a finding of act, this will not preclude the court from ascertaining what are the true facts. In other words, the declaration of fact by Congress, if not true, will not preclude the courts from ascertaining the true facts and thus forbid Congress from doing a thing which it has no constitutional authority to do.

Certainly Congress will not be permitted by a finding of fact in a preamble or policy clause to enlarge its power.

No case is to be found which upholds the right of the Federal Government to control or regulate the actual production or manufacturing of a commodity within the boundaries of a State. The Supreme Court in a long line of unbroken decisions has stated that the control of production, mining and manufacturing does not come within the provisions of any of the powers delegated by the Constitution to the Federal Government.

By the terms of the bill now under consideration, it is sought to have the Federal Government control production, mining and manufacturing under the thinly veiled guise of the regulation of interstate commerce. Having found that the Congress cannot enlarge its powers by a finding of fact or a declaration of policy and thus accomplish the doing of a forbidden thing, I will now offer authorities with reference to the distinction between production, mining and manufacturing and commerce in fact.

It has become axiomatic in constitutional law that the Federal Government having been created by the Constitution only has such powers as the Constitution confers upon it.

In this respect the Federal Government is different from State governments. The residual powers of governing this country lie in the States and in the people.

The Federal Government is one of delegated powers: Before the Constitution became effective in some of the original States, the ninth and tenth amendments were passed in order to protect States' rights and specifically limit the Federal Government to the power granted by the Constitution. These amendments provide:

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

What clause or clauses of the Federal Constitution give the Federal Government power to regulate production, mining, manufacturing and local business in the States?

It is obvious from reading the findings of fact and declarations of policy of the bill that the framers of the act rely principally upon the commerce clause.

The commerce clause of the Constitution provides as follows:

ARTICLE I. Section 8: Congress shall have power * * * to regulate commerce with foreign nations and among the several States, and with the Indian Tribes.

How has the Supreme Court interpreted this clause?

There is one class of cases which discuss the question of what is "commerce" as distinguished from manufacture and production. This class begins with the early case of *Veasie v. Moore* (20 U. S. 345), in which it was said:

Nor can it be properly concluded, that because the products of domestic enterprise in agricultural or manufactures, or in the arts, may ultimately become the subject of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase "foreign commerce," or fairly implied in any investiture of the power to regulate such commerce. A pretension as far reaching as this, would extend to contracts between citizens and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations the results of which may not become the subjects of foreign commerce, and be borne, either by turnpikes, canals, or railroads, from point to point within the several States, toward an ultimate destination, like the one above mentioned.

The doctrine has been applied in a multitude of cases that manufacture or production is not commerce. It has been applied in testing the validity of State laws alleged to be undue burdens upon interstate commerce and it has been applied to Federal laws claiming to be valid regulations of interstate commerce.

Some of the more important decisions applying the doctrine to State laws in cases involving or similar to production or manufacture are the following:

Champlin Refining Co. v. Corp. Commissioner (76 Ed. 1036 (1931); 286 U. S. 210); *Oliver Mining Co. v. Lord* (262 U. S. 172; 67 L. Ed. 929); *Heisler v. Thomas Colliery Co.* (67 L. Ed. 238; 260 U. S. 245 (1922)); *Utah Power & Light Co. v. Pfast* (286 U. S. 165; 76 L. Ed. 2038); *Coe v. Errol* (116 U. S.; 29 L. Ed. 715 (1886)); *Kidd v. Pearson* (128 U. S. 1; 32 L. Ed. 347 (1888)).

The case of *Champlin Refining Company v. Corporation Commissioner* is a case in which the plaintiff was an oil company doing business—a general oil business—producing, refining, transporting, and selling. It was suggested that the State regulatory body under the State legislature had no power to control the production of oil under the proration order since this constitutes an interference with interstate commerce. The court said:

Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. It is

clear that the regulations prescribed and authorized by the act and the proration established by the Commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation and therefore is not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce. No violation of the commerce clause is shown.

Senator AUSTIN. Will you permit a question?

Mr. CLARK. Yes.

Senator AUSTIN. What other principal enterprises are carried on in Texas, beside the oil business, through a corporate form?

Mr. CLARK. Well, we have oil, gas, sulphur business, gypsum business, carbon-black business. We have a number of corporations that are engaged in planting, growing cotton, and that are engaged in livestock raising. And then, of course, we have considerable manufacturing in the State that is done by the corporate structure.

Senator AUSTIN. Do you produce wheat?

Mr. CLARK. Yes.

Senator AUSTIN. And rice?

Mr. CLARK. Yes; in large quantities.

Senator AUSTIN. Are they produced through corporate organizations?

Mr. CLARK. Some of them are. There are a number of cooperative farm organizations. I think that in my statement here I estimated that we have approximately 500 farm cooperative and livestock cooperative associations doing business in Texas at this particular time.

Senator AUSTIN. Are they profit or nonprofit corporations?

Mr. CLARK. They are operating for mutual profit, I believe is the way they term it.

Senator AUSTIN. I see.

Mr. CLARK. In the case of *Oliver Mining Company v. Lord*, the State of Minnesota enacted a tax upon every person engaged in the business of mining or producing iron ore or other ore in the State, such tax to be equal to 6 percent of the valuation of all the ore mined or produced. The plaintiff was engaged in the business of mining iron ore. The plaintiff showed that in an output of 15 million tons of ore produced annually in the State, only 261,000 were used in Minnesota. They therefore claimed the tax to be a burden on interstate commerce. The court said in this regard, beginning on page 177 of U. S., 935 L. Ed.:

The chief contention is that mining, as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce, which a State cannot do consistently with the commerce clause of the Constitution of the United States.

The facts on which the contention rests are as follows: The demand or market within the State for iron ore covers only a negligible percentage of what is mined by the plaintiffs. Practically all of their output is mined to fill existing contracts with consumers outside the State and passes at once into the channels of interstate commerce. Three-fourths of it is from open-pit mines and one-fourth from underground mines. At the open-pit mines empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs

dig the ore, bring it to the surface through shafts, and put it in elevated pockets where it readily can be loaded into cars. The subsequent movements are much the same as at the open-pit mines, but their continuity is not so pronounced. Some of the ore from both kinds of mines—between 10 and 20 percent—is concentrated by washing or beneficiated after coming out of the mine and before starting out of the State; but our conclusion respecting the usual operations renders this deflection immaterial.

Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing is a local business, subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce.

The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference.

The case of *Utah Power & Light Co. v. Pfof* applies the same principle. Idaho established a tax on generation of electricity. Plaintiff company generated electricity transmitted over State lines by a practically continuous process. It was claimed that the tax was a burden on interstate commerce. Plaintiff brought action to enjoin the collection of the tax by the State. Justice Sutherland, for the unanimous court, held that the tax was not a burden on interstate commerce, saying on page 1047:

We are satisfied, upon a consideration of the whole case, that the process of generation is as essentially local as though electrical energy were a physical thing, and to that situation we must apply, as controlling, the general rule that commerce does not begin until manufacture is finished, and hence the commerce clause of the Constitution does not prevent the State from exercising exclusive control over the manufacture. *Cornell v. Coyne* (192 U. S. 418, 428, 429, 48 L. Ed. 504, 508, 509, 24 S. Ct.). Commerce succeeds to manufacture, and is not a part of it. (*United States v. E. C. Knight Co.* (156 U. S. 1, 12, 39 L. Ed. 325, 329, 15 S. Ct. 249).)

The same doctrine is followed in the case of *Heisler v. Thomas Colliery Company* (260 U. S. 245). Pennsylvania placed a tax on every ton of anthracite coal mined, washed or screened or otherwise prepared for market. It was objected that Pennsylvania had a virtual monopoly of the United States anthracite coal production and that most anthracite coal mined was used in other States and that, therefore, this tax constituted an interference with interstate commerce and was therefore unconstitutional.

Justice McKenna, speaking for the Court on this question, said on page 243, that the contention was:

* * * that the products of a State that have or are destined to have, a market in other States, are subjects of interstate commerce, though they have not moved from the place of their production or preparation.

"The reach and consequences of the contention repeat its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a State, determined it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize and withdraw from State jurisdiction and deliver to Federal commercial control the fruits of California, and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other States, at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to States other than those of their production.

The Court stated that the principle of *Coe v. Errol* (116 U. S. 517) applied, and that:

* * * there must be a point of time when they (goods) cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation; and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination.

The Court said in addition that this did not occur until they are committed to a common carrier for transportation out of the State.

In spite of the restriction above quoted, the same doctrine that production or manufacture is not commerce is reiterated where the question is: Can the Federal Government regulate production or manufacture?

Some of the more important cases discussing the validity of Federal laws in regulation of commerce are the following:

U. S. v. E. C. Knight (156 U. S. 1, 39 L. Ed. 325 (1894)); *Delaware, Lackawanna & W. R. R. Co. v. Yurkonis* (238 U. S. 439, 59 L. Ed. 1937 (1914)); *Hammer v. Dagenhart* (247 U. S. 251, 62 L. Ed. 1101 (1917)); *United Mine Workers v. Coronado Coal Co.* (259 U. S. 344, 66 L. Ed. 975 (1922)); *United Leather Workers v. Herkert Trunk Co.* (265 U. S. 457, 68 L. Ed. 1104 (1923)).

The *Knight* case relies on this doctrine alone for holding that Congress cannot regulate manufacture but can only regulate commerce.

In *Hammer v. Dagenhart*, the child-labor case, the Court says, at page 1106:

The making of goods and the mining of coal are not commerce, nor does the fact that these things are afterwards shipped or used in interstate commerce make their production a part thereof.

Coal mining as such was held not to involve "commerce" in *Delaware, Lackawanna v. Yurkonis* and in *United Mine Workers v. Coronado Coal Co.*

Interference with the manufacture of trunks was held not to be commerce in *United Leather Workers v. Herkert Trunk Co.* The rule that manufacture and production as such are not in and of themselves "commerce" can be taken as settled.

In *Chassanoil v. City of Greenwood*, decided March 12, 1934, the Supreme Court in an opinion by Mr. Justice Brandeis, reaffirmed the doctrine hereinbefore discussed. In that case the city of Greenwood, Miss., laid a tax on every person engaged in the business of buying or selling cotton for himself within the city. The plaintiff paid the tax under protest. He applied for a refund. It was denied. The action of the city in denying the claim was sustained by both the circuit court and the supreme court of the State. The Supreme Court of the United States on review of the State supreme court's decision held that the business was an intrastate transaction and not interstate commerce, and said:

Ginning cotton, transporting it to Greenwood, and warehousing, buying, and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce.

But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce. Hence those engaged in performing any such local function may be subjected to an occupational tax, just as the property used, or processed, by them may be subjected to a property tax.

Thus we say that beginning with the early decisions of *Gibbons v. Ogden* and *Martin v. Hunter*, down to and including *Champlin Refinery Co. v. Corporation Commissioner*, the Supreme Court has, without exception, made a clear distinction between production, mining, manufacture, and commerce. It has been repeatedly reiterated that the Federal Government has no constitutional authority to control production, mining, and manufacturing under the guise of regulating interstate commerce.

The railroad cases are usually cited as the authority of Congress for controlling business "affecting" commerce. However, none of these cases dealt with production or manufacture. It has always been considered that Congress under the commerce clause has full power to control the means by which transportation is carried on. It is obvious that hours, wages, and rates are closely and directly connected with that means and it is equally obvious that control of intrastate commerce may indirectly and substantially affect the regulation of interstate carriers.

The most important cases discussing these various laws seem to be the following: *Delaware-Lackawanna & Western Ry. v. Yurkonis* (238 U. S. 439, 59 L. Ed. 1397); *United States v. Fenger* (250 U. S. 199, 63 L. Ed. 936 (1918)); *Stafford v. Wallace* (258 U. S. 495, 66 L. Ed. 735 (1922)); *Board of Trade v. Olsen* (262 U. S. 1, 67 L. Ed. 839 (1922)).

All of the above cases consider and stress the factor that there was a "flow" or "current" of commerce between the States. They all involve situations where the flow was through a particular city. The antitrust cases can be distinguished on this basis since in this legislation there is no flow of commerce until after production is completed.

It has been held in cases involving State taxation and many others that interstate commerce does not start until the shipment starts.

Senator BORAH. May I ask you a question?

Mr. CLARK. Yes.

Senator BORAH. Of course, you concede that the Congress has the power to require a corporation engaged in interstate commerce to take out a license, do you not?

Mr. CLARK. Yes.

Senator BORAH. Let us suppose that corporation A is mining iron and shipping it in interstate commerce, and on the way manufactures it, and sells it to the consumer. You will admit, will you not, that Congress would have the right to require that corporation to take out a license?

Mr. CLARK. The one that was producing the iron?

Senator BORAH. It produces the iron and puts it on the cars and ships it, and manufactures it and sells it to the ultimate consumer.

Mr. CLARK. Oh, no. I have some cases cited directly against that.

Senator BORAH. But your case is with reference to taxation, and I am asking you if that corporation actually engaged in interstate commerce, mined the ore, put it on the cars, and shipped it in interstate commerce, the Congress can require it to take out a license?

Mr. CLARK. Not to regulate its production.

Senator BORAH. I am not talking about regulating production. I am talking about regulating the corporation which produces and ships in interstate commerce. I am talking about regulating the corpora-

tion, requiring it to take out a license, because it is engaged in interstate commerce.

Mr. CLARK. Not until the shipment actually begins in interstate commerce.

Senator BORAH. I am talking about where it has actually begun.

Mr. CLARK. Of course, where they are actually engaged in interstate commerce, there is no question about it. But I contend that until the shipment begins the production and manufacture do not have anything to do with it.

Senator BORAH. The corporation is a unit. It got its charter, we will say, from Texas. We would have said from Delaware until we heard your statement. We will say it is a corporation chartered in Texas. It mines coal in Texas. It ships it in interstate commerce. We say to that corporation: "If you are going to engage in interstate commerce you must take out a license."

Mr. CLARK. In Texas we are creating it for one purpose only—to mine coal. There would not be any transportation business and we would have control and authority over transportation.

Senator BORAH. Suppose it actually is shipping in interstate commerce?

Mr. CLARK. I would say they are not under our law, but if they were shipping in interstate commerce they would be subject to regulation by Congress.

Senator BORAH. All right.

Mr. CLARK. As I understand the proposed bill, every corporation which is not licensed or required to be licensed may, by the terms of section 7, be required to become licensed if the Federal Trade Commission, through whom the act is administered, rules that the corporation is either not operating in accordance with the conditions which regulate licensed corporations, or if the competition of such licensed corporations, in the opinion of the Commission, interferes with the handling of identical commodities by a licensee, or gives to the unlicensed corporation a competitive advantage in produce, manufacturing, or distribution.

Furthermore, as a condition of obtaining a license, every corporation is required by the terms of section 3 to certify, through its board of directors, that it will accept any further restrictions or limitations which the Congress may impose upon it as a condition of engaging in commerce and by the same section every licensed corporation is to be authorized to accept any restriction that Congress may impose upon the State charter under which it operates by the action of its board of directors without recourse to the stockholders.

I understand from the statement of the sponsors of this legislation that its purpose is to obtain a more effective control over monopolies and trusts, and thus to strengthen the antitrust laws. With such an objective the State of Texas is in sympathy. To the extent that the authority of Congress to regulate commerce is exercised I recognize the plenary and exclusive authority of that body. But I respectfully submit that that power has not extended previously, by the recognized decisions of the courts, to the control of the internal structure, the corporate charter and the employment relations of the corporations of a State when engaged in acts of production, nor to charters in their cooperative associations, in the production and sale of their goods, or their common purchases.

Texas is a very large State. If the population were equal to that of Italy, the density of that population would not be as great as that of Italy is now. It has undertaken to preserve freedom of competition in trade and for its traders, and to that end it has adequate legislation to prosecute, punish or dissolve monopolies, and it has done so with extraordinary success. It has created many corporations which it strictly supervises. It has licensed many corporations from other States, now engaged in the development of its resources and having their principal place of business in Texas, although incorporated elsewhere. They have been made welcome and will continue to be while they obey the laws of our State.

But as I understand this measure, it would provide that no corporation hereafter chartered in any State of the Union could have its chief place of business or its executive offices in Texas, where, for example, in the oil business, its major properties and chief interests might be. Or if it already possessed that right by virtue of its existing charter, it would have to agree, as a condition of obtaining a license, to continue in business, that Congress could at any time by future legislation, change its charter and take that right from it, which would cause great loss and confusion in the reorganization of existing business to the injury of the citizens of Texas whom it employed and to the revenues of our State. Moreover, any corporation which Texas authorized to hold meetings of its board of directors outside the State would either be refused a license or compelled to change its internal structure.

In many other respects the corporate creations of Texas would be required in effect to take out a Federal rather than a State charter, and the right of the State to determine the character of its policy with respect to the creatures of its own creation would be determined by Federal rather than State authority. This, by definition would not be confined to the engagement of a Texas corporation in commerce, but would reach back into the State and control the circumstances and conditions under which a Texas corporation or a Texas farm cooperative having the requisite amount of capital assets, engaged in any form of production, under the threat that if its methods of production did not conform to the requirements of the Federal statute it could not subsequently have commercial relations with its fellow States. The result would profoundly affect both the authority and the revenues of the State of Texas, and we respectfully submit it would involve an invasion of the authority of our commonwealth, which surely is not intended, and which, when inadvertently attempted, in the case of the building and loan associations established by the State of Wisconsin, resulted in a condemnation of the theory of Federal control attempted, by a unanimous Supreme Court, speaking through Mr. Justice Cardozo (*Hopkins v. Building and Loan Associations*).

With all due respect there would be serious objection to any proposed Federal regulation of commerce which would involve the right of a board of directors of a Texas corporation, by virtue of an act of Congress, accepting without recourse to the stockholders, a modification of their charter as a condition of permitting them to trade with their fellow citizens in other States.

The great majority of the conditions attached to the proposed license bear upon local matters remotely related to commerce, to the internal affairs and internal organization of the corporation which are but distantly connected with commerce.

Furthermore, the numerous and severe penalties which might be inflicted upon the citizens of our State are a matter for serious consideration. It seems to us further that unfortunate conflicts would arise between the authority of the State and the authority of Congress which would be most regrettable, since the citizen might be confronted upon the one hand with the threat of the loss of his charter if he disobeyed the State and the threat of the loss of his license if he disobeyed Congress.

I speak with the utmost respect for the plenary and exclusive authority of Congress in the domain of commerce. I trust this honorable committee will think me not the less respectful if I emphasize the authority of the State with respect to local relations having either no relation or a remote one which it seems to us by definition this measure is unhappily bringing within the field of commerce. I assure the committee that in the determined effort to control and suppress unlawful monopolies, the proponents of this measure will find no more determined competitors than the State of Texas.

May I urge that this drastic legislation be not enacted. I feel that it is certain to plunge business into chaos; it will cause a period of uncertainty which will result from endless litigation; it will strike fear into the hearts and minds of those engaged in production, mining, manufacturing, and all other local business; it will retard recovery and force men out of employment.

Senator AUSTIN. Earlier in your statement I understood you to say that general business conditions in Texas are good, but that the farmers are not participating in that welfare. Is that true?

Mr. CLARK. That is a fact, Senator.

Senator AUSTIN. How do you account for that, in view of the large sums of money that have been sent to Texas from the Federal Treasury for farmers?

Mr. CLARK. I believe you have got me there. We got a lot of money down there and we are still willing to accept anything you want to give us. I don't understand that. Last year we made twice as much cotton as we made in the year previous. We made the largest cotton crop in the history of our State, and still our farmers are in a critical condition. The livestock raisers are in better condition.

Senator BORAH. One reason I think you might assign is the fact that your cotton market abroad is being absorbed by other producers.

Mr. CLARK. Yes. I think some of our market has gone to South American countries. We do not sell as much cotton to Japan and Germany as we used to do. Our business is in England, Belgium, and France for a large part of our cotton exported from our State.

Senator BORAH. Are there any imports of cotton under the reciprocal trade agreement?

Mr. CLARK. Not that I know of. I don't know much about that.

Senator O'MAHONEY. Most of the farmers are operating in an individual capacity?

Mr. CLARK. I would say that a majority of them are. They are small independent farmers.

Senator O'MAHONEY. And when they ship their cattle and sheep and cotton to market they take what they can get, do they not?

Mr. CLARK. Yes; they take it all.

Senator O'MAHONEY. But when they go downtown to buy an automobile or a gallon of gasoline, they pay the price the big companies fix, do they not?

Mr. CLARK. Whether they are big companies or little——

Senator O'MAHONEY. Just answer the question.

Mr. CLARK. Not the prices the big companies fix. Those independent refineries always sell below the price that the big companies sell.

Senator O'MAHONEY. How about the automobile?

Mr. CLARK. Well, we have to pay the price if we buy them.

Senator O'MAHONEY. Do you think that by any possibility that may be the cause of the unfortunate condition of the farmers? Perhaps your antitrust laws are not working as well as you might like to have them work.

Mr. CLARK. I think there is real competition in the automobile business. I could not say without divulging a confidence, but I had it from pretty respectable authority.

Senator O'MAHONEY. I do not want to intimate that all the automobile manufacturing companies are in a combination. That is not my thought. I was just emphasizing the fact that, with respect to the products of industry, for the most part, the individual pays the price that is fixed for the thing he buys. Our whole corporate economy is arranged upon such a basis that a stabilized price, so-called euphoni-ously, is fixed by the large corporations that dominate the scene, and the individual flesh-and-blood citizen pays what he is told to pay, and there is no substantial competition. What we are trying to do is to develop a system whereby we can really maintain competition throughout the United States.

Senator BORAH. I was going to say, Mr. Clark, that I do not think anyone connected with this bill has any intention of interfering with what you regard as the purely local operations in the State of Texas or anything that is only remotely connected with interstate commerce. If we have trespassed upon that principle it has been inadvertently and not intentionally. So Texas can be at ease upon that.

Mr. CLARK. Thank you, sir.

Senator O'MAHONEY. Thank you very much. We are very glad to have heard you.

STATEMENT OF MONROE SHAKESPEARE, KALAMAZOO, MICH.

Senator O'MAHONEY. Please state your name to the reporter.

Mr. SHAKESPEARE. My name is Monroe Shakespeare. I am executive vice president of the Shakespeare Co., Kalamazoo, Mich., manufacturers of fishing tackle. I am also vice president of the Associated Fishing Tackle Manufacturers, representing about 400 different manufacturing establishments in the United States.

Senator O'MAHONEY. You may proceed with your statement.

Mr. SHAKESPEARE. I have been in business since about 1921, and have had quite a little experience, sometimes unsuccessful, and at other times successful.

Senator O'MAHONEY. The corporation of which you are the head was incorporated under the laws of what State?

Mr. SHAKESPEARE. Michigan.

Senator O'MAHONEY. Where do you do business?

Mr. SHAKESPEARE. We do what is referred to as a national business.

Senator O'MAHONEY. And you are engaged in interstate commerce?

Mr. SHAKESPEARE. I presume we are.

Senator O'MAHONEY. Do you manufacture fishing tackle?

Mr. SHAKESPEARE. We manufacture fishing tackle.

Senator O'MAHONEY. And you transport it?

Mr. SHAKESPEARE. Between the States.

Senator O'MAHONEY. And you sell it?

Mr. SHAKESPEARE. In other States.

Senator O'MAHONEY. Do you sell it direct to the consumer?

Mr. SHAKESPEARE. For the most part. I would say 99 percent of it is sold through dealers.

Senator O'MAHONEY. Most of it is sold through dealers?

Mr. SHAKESPEARE. Yes.

Senator O'MAHONEY. With respect to the other 400 members of your association, are they engaged in the same type of commerce?

Mr. SHAKESPEARE. Very largely. Any of them that attain any size have to do business outside of the State in which they produce.

Senator O'MAHONEY. What is the nature of that association?

Mr. SHAKESPEARE. It is an organization of manufacturers of fishing tackle to discuss kindred problems, problems common to all of them.

Senator O'MAHONEY. Is it a Michigan association?

Mr. SHAKESPEARE. I do not believe it is incorporated. I am not positive.

Senator O'MAHONEY. It is a national association?

Mr. SHAKESPEARE. Yes.

Senator O'MAHONEY. These 400 members are scattered all over the United States?

Mr. SHAKESPEARE. Yes.

Senator O'MAHONEY. And a good many are corporations?

Mr. SHAKESPEARE. A large majority of them would be corporations.

Senator O'MAHONEY. What is the purpose of the association?

Mr. SHAKESPEARE. To consider common problems.

Senator O'MAHONEY. What type of problems do you have in mind?

Mr. SHAKESPEARE. The matter of propagation of fish, the matter of the expenditure of license fees, and such matters as that.

Senator O'MAHONEY. That is to say, to stimulate in the State the propagation of the fish that your customers are going to catch?

Mr. SHAKESPEARE. Right.

Senator O'MAHONEY. And the expenditure of license fees collected by the State for the purpose also of stimulating the production of fish?

Mr. SHAKESPEARE. Right.

There is also a national activity or Federal activity along that line.

Senator O'MAHONEY. Do you have any other common problems?

Mr. SHAKESPEARE. Yes. At a recent meeting a group of jobbers had representative members before our body with the idea of trying to get more firmly established the distribution of tackle through the jobbing channels instead of direct to the dealers, as some of the manufacturers do.

Senator O'MAHONEY. Do you have any question of fair trade practices?

Mr. SHAKESPEARE. Our group came largely into being under the N. R. A. Every effort was made to cooperate voluntarily and comply

with the N. R. A. I believe that was the language in the—I do not remember what it was called.

Senator O'MAHONEY. Code.

Mr. SHAKESPEARE. Code.

Senator O'MAHONEY. You entered into that code voluntarily, I assume?

Mr. SHAKESPEARE. Yes.

Senator O'MAHONEY. You have certain national problems?

Mr. SHAKESPEARE. Yes.

Senator O'MAHONEY. Very well. You may proceed with your statement.

Mr. SHAKESPEARE. I have carefully studied this Federal licensing bill and believe the objectives as stated in the first paragraph or preamble are highly laudable. Our business and all business that I am familiar with is in a decided slump. I feel that the reason for that is that we are subject to too much overhead—too much nonproductive overhead. I will try to elucidate on that shortly. But no one would try to improve business by adding more overhead to that which business is suffering from.

Now, in order to avoid a lot of complexities, I would like to illustrate with a relatively simple example what I mean by the overhead that our business and all other business is now suffering from. If we had a group of people, for instance, coming to this shore from abroad, like the Pilgrims did, and landing here and going to work, I think that would serve to illustrate our situation. Say there were 100 of them. Some of them would till the land or build houses, and some would tend the cattle, but all of them would work, all of them would engage in production.

Now, the first day or two we will say one of the members got an arrow in his back, and they concluded that something needed to be done. So they decided that there were possibly two of those people who were good shots, and they could stand around with their guns and protect the rest of the workers; that those two people would not be producing usable goods, but, nevertheless, they would have to be supported, would have to have the ability to raise families, and so the group decided that they would have to put up that amount of overhead in order to carry on the productive activities.

Now, as the community grew, they decided they would have to have a police department, and a fire department, and a judiciary, and as it grew further, an army and a navy. All those are nonproductive, producing no usable goods, consuming the goods that the others produced, but they are necessary.

Now, those who have followed the growth of this country over 150 years, and particularly in the last few years, have noted in all business how this additional heavy, nonproductive overhead has been added, particularly within the experience of the Wagner Labor Act. That has added to our business, employing 500 people, 1 full-time girl, whose chief activity is the collection of a file for each of the employees. It used to be true that if an employer was not satisfied and wanted to dispense with the services of employees, he could dispense with them. It was not possible then for them to rush to a representative of a Government bureau and claim that they were engaged in an activity that they thought the Government bureau could retain or reobtain their jobs for them.

The result of that is, in a business like ours, if we want to dispense with the services of an employee at any time, we need to have behind us a record which would be in the nature of satisfactory evidence to a jury, and a not too sympathetic jury. So we have to have a person keeping a careful record. It takes a full-time additional person. That person has one other duty only, and that is to record the minutes of the meetings held between the management and the employees or the employees' representatives, so that we will always have a record of what was actually said, and not the impression of somebody as to what they thought was said.

Now, I believe that this act, the Federal Licensing Act, adds a tremendous additional burden of overhead—nonproductive overhead. And the situation that we are in today, the general business conditions, indicate the possibility of these various burdens actually killing the goose that is laying the golden eggs, all of them.

Now, among my friends and acquaintances, which would include owners of business many of whom are considerably older than I am, all of them I am talking about well fixed personally, no necessity of working if they do not want to, and if you would ask them at any time in the past, say 2 or 3 years ago, or any time prior to that time: "Why do you continue coming down to the office and putting in full time, devoting a good many of your evenings to conferences and rushing all around over the country and doing this hard work?" the answer would invariably be that they knew of nothing more pleasant, nothing more agreeable, nothing they would rather do than to continue to work in their creative capacity, creating new articles, extending production and therefore employment, studying methods that would make their employees more productive and having therefore a larger production to share with those employees.

But in the past year or two there is a decided tendency on the part of these same businessmen to entirely change their minds. Now they have this staggering burden of overhead, creating a tremendous toll of taxes for its upkeep, and the frequent investigations and sometimes what seems to them to be persecutions, so that it is no longer a pleasure to be at the head of a business where they have to carry that load. They can now think of a lot of things they would rather be doing than that creative work.

It is these people I am talking about who are responsible for the large research appropriations that each progressive business concern carries; that is, each one is large in proportion to the size of the business. It is those new productions and new methods of business that they are responsible for, and in which they take their chances that it may work out; that is, providing they have provided a steadily increasing standard of living, steadily improving standard of living that this country has enjoyed.

This tremendous enlargement of the functions of government is adding a staggering overhead, which has reached the point where it is questionable whether productive business can carry it without the producers accepting a steadily decreasing standard of living. It takes the bulk of the profits when the business is successful; it stifles enterprise and initiative, it deprives management and the owners of the authority over their business, and leaves them with all the loss, if their efforts are not crowned with success. Business is being reduced

to a game of "heads I win, tails you lose," with the Government running the game.

In looking over the preamble of this bill I find among the purposes that it is to assist the several States to improve labor conditions and enlarge the purchasing power for the goods sold in such commerce. That, of course, is highly desirable. Nobody could criticize such objectives. The only question about it is: Will it work? Will it do what it is intended to do?

We might find an answer to that in another recent similar bill with a similar purpose, and I will call attention to the preamble of that. That bill was approved on July 5, 1935, and has, therefore, been in operation for 2½ years. The purpose of that bill, as stated in the preamble, was to diminish the causes of labor disputes burdening and obstructing interstate commerce. We have about 2½ years of experience with that. Has it reduced the strife over a period of 2½ years in our history? No. I think the result of a recent survey by the National Industrial Council—

Senator O'MAHONEY (interposing). Do you mind my interrupting you, Mr. Shakespeare?

Mr. SHAKESPEARE. No.

Senator O'MAHONEY. My own conception, of course, is that you are talking on a subject that is altogether off the question. My feeling is that the condition which you have described, the expanding of governmental functions, has been the result of the concentration of capital, of economic power and wealth through the ineffectiveness of the antitrust laws, and that this bill offers at least a principle upon which businessmen like you may escape Government control. I have no hesitation whatever in predicting that, until you cooperate with Members of Congress to find a way by which the corporate organizations which are carrying on the business of the country and the world today may operate in some sort of democratic manner, some sort of self-governing manner, you will not be able to avoid the continued expansion of Government.

The witness who preceded you on the stand testified very frankly that, so far as he was concerned, Texas was very glad to continue to receive Federal contributions. You will find that everywhere, in every State and in every city. So that our problem, if we desire to prevent the steady expansion of that overhead, is to find a method of making that economic organization work.

Mr. SHAKESPEARE. I appreciate that is your conception of this bill, and what it is intended to accomplish, and that you believe that is the way to accomplish it. My purpose in testifying here is to give my impression of the operation of the bill.

Senator O'MAHONEY. You were talking about the National Labor Relations Board, were you not?

Mr. SHAKESPEARE. That is correct; and if you were attentive to the introduction of my remarks you will recall that I said that the purposes of the bills were similar.

Senator O'MAHONEY. I assure you that I was most attentive.

Mr. SHAKESPEARE. One of them we have had some experience with, and I want to call attention to that principally because it applies to the question of whether the purposes of this other bill, the Federal licensing bill, will be carried out and accomplished any better.

The purposes of the bill, as stated, with a good deal of elaborate machinery and rules and regulations, was to diminish the causes of labor disputes. Anybody reasonably would assume that if the causes of labor disputes were reduced, that labor disputes would be reduced; that, however, has not proved to be so. The experience is diametrically opposite. Strife has been steadily increasing. There were approximately five times as many strikes and five times as many labor hours lost through industrial strife as in any year previous to that time.

Senator O'MAHONEY. We will have to suspend at this point. There has been a call for a vote in the Senate. We will recess until 2 o'clock, and meet in the Judiciary Committee room in the Capitol. (Whereupon, at 12 m., a recess was taken until 2 p. m.)

AFTER RECESS

At the expiration of the recess the hearing was resumed, as follows:

STATEMENT OF MONROE SHAKESPEARE—Resumed

Senator O'MAHONEY. If you do not mind proceeding, Mr. Shakespeare, you may do so.

Mr. SHAKESPEARE. At the recess I was discussing the expected outcome of the passage of this bill, as it is written, and I chose to draw upon the experience of a similar bill recently passed with similarly stated purposes and with similar machinery provided for the accomplishment of the desired ends of the bill. I refer to the Wagner Labor Act. I had stated that although the act was created to diminish the causes of labor disputes, just as this act is drawn, among other purposes, to improve labor conditions, labor disputes, and lost time and lost wages have not only not been reduced, but the effect of the act was to multiply greatly, at least five times, the number of disputes and the number of lost hours.

Was the purchasing power increased as a result of the operation of that act? I believe no one will deny the fact that the purchasing power has certainly not been increased. A large part of the workers are on part time or without employment. So that end was not accomplished, but the opposite took place.

Was interstate commerce and other commerce improved? You who are aware of the conditions know that interstate commerce has not been improved, but was seriously impeded and hindered, and actually several businesses have been absolutely destroyed.

I call your attention to an article in yesterday's New York Times, a report of the Chicago Luggage Carriers Union, as to a dispute with the Taylor Trunk Co., in which the labor union made complaint to the labor board and used the kind of machinery that is provided in this bill to present its claim, and the Board held eventually with the union and ordered the company to do this that and that; that this company, in view of this particular activity and the number of other burdens that have been put on industry during the past 2 or 3 years, although the Taylor Trunk Co. had been in business some 78 years, and had over 250 employees, is now liquidating and discontinuing business. I submit that that is not the way to improve the lot of the worker or to improve business conditions.

Senator O'MAHONEY. Do you recommend the repeal of the National Labor Relations Act?

Mr. SHAKESPEARE. I am pointing out the result in that instance, which is similar to that which will be taken by a lot of other people.

Senator O'MAHONEY. Are you recommending the repeal of the National Labor Relations Act?

Mr. SHAKESPEARE. My answer will answer your question.

Senator O'MAHONEY. Of course, it is a very simple question to answer.

Mr. SHAKESPEARE. May I make the answer instead of you making it? You would like to have me say "yes" or "no", but I would like to make my own answer.

I am pointing out the similarity in these two bills, and the machinery provided, and the close relations of the two, and how in the experience we have already had that bill has failed. The other bill that we have had experience with has failed in its objectives.

Senator O'MAHONEY. That is just your conclusion.

Mr. SHAKESPEARE. Answering your question additionally, for your benefit, am I recommending the repeal—

Senator O'MAHONEY. Let us have an understanding. This is not for my benefit. You have been invited to appear here for the public benefit. Now, please do not make it personal.

Mr. SHAKESPEARE. All right, sir.

Senator O'MAHONEY. I could make these hearings very personal, if I want to. I am trying to be polite to you and everybody who appears here. We are trying to develop facts. The questions that I propound are for the purpose of developing information and not for the purpose of developing an argument. Please do not put them on a personal basis.

Mr. SHAKESPEARE. All right. I will endeavor to confine myself to developing information. Was your question answered?

Senator O'MAHONEY. I did not quite get it if it was.

Mr. SHAKESPEARE. I believe your question was, am I recommending the repeal of the National Labor Relations Act.

Senator O'MAHONEY. Yes.

Mr. SHAKESPEARE. It was my thought that the hearings on this bill were not for the purpose of making recommendations as to other acts on the books, but if you consider it proper I will make my recommendation in regard to the Wagner Labor Act.

Senator O'MAHONEY. Of course, that does not answer it. It is not important. It is irrelevant. So proceed with your statement.

Mr. SHAKESPEARE. The purpose of this legislation, as stated, is to accomplish some very definite results, which should be, if accomplished, desirable. And so was the Wagner Labor Act. Since it did not accomplish what it set out to do, did it benefit anybody? I say I think it did. I think it very definitely did not benefit the labor it was supposed to benefit, nor did it benefit business or interstate commerce which it was supposed to benefit; but it did benefit quite a group of people who received employment as a part of the National Labor Relations Board, and of the investigators and attorneys and clerks, and so forth. It gave them steady employment as nonproductive labor and a tax on business. It also benefited another and probably smaller group, namely, the national labor union officials, because it increased their income and increased the steadiness of their pay, and the solicitors

that are employed to recruit their membership. I believe that is the limit of the individual cases that were benefited.

I would like to draw the parallel that I think this bill was also intended to benefit a similar group in a similar capacity, and that would be the limit of the benefit to the other group, namely, enlarging the purchasing power among the producers. But it did the opposite. It decreased the purchasing power, and decreased it by the amount that is taken and handed to the machinery provided for the enforcement of this act.

I believe that the important purpose stated in this act is to discourage and prevent monopoly, but my observations in the past few years have been that close Government supervision and control have been and still are promoting monopoly in the branches of industry to which applied. There will be a lot more said on that subject, and I will endeavor to avoid duplication and the offering of cumulative evidence, for I know that subsequent speakers' remarks in some respects are almost a duplication of what I would have to say.

Now, instead of the activities and the procedure outlined in this bill, the Federal licensing bill, in order to obtain the desirable results stated, that it is the desire to be obtained in this bill.

Now, instead of the activities and the procedure outlined in this bill, the Federal licensing bill, in order to attain the desirable results stated, that it is the desire shall be obtained, in this bill, I believe that a fair and intelligent approach to the problem of lifting the standard of living of the multitude lies in bending every effort to make more perfect these things: First, the freedom of the individual to devote his energies to whatever productive work he pleases; second, to endeavor to secure to each individual the fullest possible fruits of his production; and, third, the reduction of the unnecessary overhead, such as this Government expense in all its forms, to the absolute minimum. I do not think that the procedure outlined in this bill does anything, unless it works in the opposite direction to the procedure outlined by me.

Senator BORAH. We had all that in 1929, did we not?

Mr. SHAKESPEARE. No; you had more freedom than you have now, yes; but 1929 cannot be considered by itself any more than I can take one of your speeches and take one sentence out of it, or half a sentence, and build something out of it without considering the rest of the context; 1929 cannot be considered without considering the years from 1920 to 1928, which was the most glorious period of increasing standards of living this country has ever enjoyed.

Senator BORAH. Among the masses?

Mr. SHAKESPEARE. Yes.

Senator BORAH. I would like to see your figures on that.

Mr. SHAKESPEARE. They are all available. They are as available to you, and more so, as they are to me.

Senator BORAH. They are not available to me, because I cannot find them.

Senator O'MAHONEY. And nobody has produced them. If you can produce them, we would certainly like to have them, and you will be doing a great service.

Mr. SHAKESPEARE. They are available, and if you are willing to hold these hearings open for another 3 or 4 days to get that subject covered, I will be glad to go into it. I am going to New York, where

I will be in contact with the National Industrial Council, and I can get figures to prove that point.

Senator O'MAHONEY. If you take the studies of the Brookings Institution, to which Senator Borah has alluded previously in these hearings, and show us something to indicate they are wrong, that will be doing a public service. You may send it in. We will not hold the hearings open for that purpose, but we shall be glad to file it.

Mr. SHAKESPEARE. I will endeavor to find what I can for your record, on that subject.

Senator BORAH. Taking your theory as correct, that 1928 was a glorious year in the matter of distributing purchasing power among the masses, what stopped it so suddenly in 1929?

Mr. SHAKESPEARE. Well, I presume that the answer to that is we had been traveling a little bit too fast in certain directions; that certain of the activities had been overexpanded, and that we had overcapitalized on some paper profits and some paper activities, and a readjustment was needed to take place after having enjoyed approximately seven continuous years of steadily improving business and steadily improving employment, and a general increase in the welfare of the average and the below-average worker.

Senator BORAH. I wish you would present those figures also. The fact of the business is, and the figures, in my opinion, show that gradually, more and more, through those years, there was an accumulation of wealth taking away from the masses their purchasing power so that in 1928 and 1929 nearly 50 percent of the people of the United States were living on the bare necessities of life. In other words, 36,000 families were at the top of the ladder, economically speaking and 11,500,000 were at the bottom of the ladder.

Mr. SHAKESPEARE. Those may be true and accurate figures. I am not familiar with them.

Senator BORAH. I got them from the Brookings Institution, which I think is reliable.

Mr. SHAKESPEARE. I have a good deal of respect for the Brookings Institution's figures, but I see nothing in this bill to accomplish any improvement in that situation. This bill will simply do as other bills recently passed have done—take more and more people out of production, put them into nonproductive work, and give them more pay, give them steady pay out of the fruits of productive labor, and that is no way to raise the living standards of the low-paid workers. The only way that can be done is the way it has been done in the past 100 years, namely, that the inventive genius and management of the better minds has been devoted to increasing the production and increasing the opportunities to work in making more goods produced and more things to be distributed.

Senator BORAH. More things to be distributed, but you cannot distribute them unless the masses can buy.

Mr. SHAKESPEARE. That is correct.

Senator BORAH. If you have that concentration of wealth which draws the benefits that you speak of into the hands of a few instead of distributing the benefits of inventive genius among the masses, giving them lower prices, and so forth, you have what is called business prosperity constantly taking away the purchasing power of the masses.

Mr. SHAKESPEARE. You say the masses cannot buy this thing that they produce, but the fact that they produce it gives them the power to buy, and that is the only way their buying power can be increased. Buying power cannot be increased by taking part of what has been produced away from the management or owners of business and giving it to a lot of Government employees and saying, "Now, go out and buy a lot of stuff with that." That does not increase the buying power one iota.

Senator BORAH. Let us take the implement trust. Do you think that it helps the farmer to prosper to pay the prices which two or three implement companies fix?

Mr. SHAKESPEARE. That is a very interesting subject. I heard that asked of Mr. Clark this morning, and I hoped you would ask me that question. You say the farmer produces a bushel of wheat and has to take what the market offers, but the implement manufacturer or the automobile manufacturer does not have to take what the market offers. All the manufacturers of implements or automobiles can do is to offer their products for sale. Nobody has to buy. They absolutely do not have to buy. If they place the price too high, it is not bought.

Senator BORAH. You are mistaken about that. The farmer has to buy to efficiently operate his farm. You will find that is a matter of fact; there is no use to deny that proposition, because it is thoroughly established. The prices of implements are fixed by a few people in conference.

Mr. SHAKESPEARE. I have not been present at any of those conferences and do not number any of them among my personal acquaintances, so I do not know that to be a fact; but all my life has been spent in business, and I know what sets the price on what I make, and I think I know it more accurately and reliably than any Government employee who has spent very little or no time in business in trying to make the business pay. What sets that is that you make your product and offer it for sale, and if your price is right and appeals to the people they buy and you succeed. That is exactly what built the Ford Motor Co. He did not conspire with anybody to build that. If somebody else had offered better value than he offered, they would have got the business.

Senator BORAH. We ought to erect a monument to Henry Ford.

Mr. SHAKESPEARE. He did not need any Government bureau to help him.

Senator BORAH. If it had not been for Henry Ford we would have a complete monopoly of automobiles.

Mr. SHAKESPEARE. That is a matter of opinion. My opinion is different from yours.

Senator BORAH. It is not an opinion; it is a fact.

Senator O'MAHONEY. Let me say that it is quite evident that you are testifying in heat and passion. You are not coming here in an effort to assess this bill coolly and calmly, and you are talking about something entirely different from this bill. May I say to you that whatever may be the imperfections of this bill, however inexpertly it may be drawn—and there probably are a good many changes that ought to be made—what I want you to know, and what I want every person who is interested to know is that it is not the purpose of those of us who are sponsoring this bill to build up some bureaucracy, and

it is not our purpose to create more Government jobs. It is our purpose to stop the trend toward bureaucracy by setting business free.

The concept I have is this: A modern corporation is a modern instrumentality for carrying on trade and commerce. If it is to be made to function properly we must find a way by which the public interest can best be served. That is our purpose in holding these hearings. It does not do any good for me to say this bill will cure everything and for you to say this bill will make everything worse. What we ought to do is to assess our problem and try to get our heads together and see what can be done to accomplish the objectives which everybody who looks at this problem recognizes must be accomplished. Something has got to be done. It would be very helpful to us if you would contribute your opinion as to the constructive achievements that ought to be accomplished.

Mr. SHAKESPEARE. Yes. Your first point was that my remarks were in the heat of excitement over this bill, and I would like to say—

Senator O'MAHONEY (interposing). I hope it is not over this bill that you have been developing that feeling.

Mr. SHAKESPEARE. I spent considerable time by myself in studying the bill carefully, and there was very little heat there. My remarks were carefully outlined and I have endeavored to follow the outline. I believe that any other developments recently have been the result of the questions and the endeavor on my part to throw light on the subject, but with very little heat and in a rather impromptu manner.

The second statement you made was that it was desired to set business free. My contention is that it is a very peculiar way to proceed to set business free by loading onto it a bureau empowered to dictate to it on innumerable fronts and in innumerable points of contact with business, and denying their license if they do not meet their wishes.

Senator O'MAHONEY. The bill does not authorize any dictation whatever.

Mr. SHAKESPEARE. No; but they must go out of business or yield to the dictation.

Senator O'MAHONEY. There is no dictation whatsoever. The public authority through Congress may and will eventually set down the rules by which corporations engage in commerce.

Mr. SHAKESPEARE. Let us hope you are wrong. Your statement is that there is a crying situation that something needs to be done about. I am in thorough agreement with that. I think we have reached a rather deplorable state, and the thing that needs to be done is to take off of business and production that perfectly terrific load of Government activities and business supported Government activity that has been loaded onto it in the past 4 or 5 years. If this committee wants to do something for business and for the multitude, that is the direction to proceed, and not the direction proposed by this bill, which is in the direction of adding more of the same thing.

I have just a closing remark, and you will be rid of me. Under such a program as I have just outlined in these last few remarks there will develop a steady improvement in the lot of the multitude, and a much higher standard of living than in any other country in the world, even higher than those countries which have tried to use just such measures as this bill and the Wagner Labor Act provide. I repeat that

such activity is doing nothing more than killing the goose that laid all the golden eggs of our prosperity.

I thank you.

STATEMENT OF MISS LELIA E. THOMPSON

Senator O'MAHONEY. Miss Thompson, you may proceed by first giving you name to the reporter.

Miss THOMPSON. My name is Lelia E. Thompson. I am an attorney practicing in Connecticut, and licensed in Massachusetts, although I am not practicing there. I am head of the legal department of the Connecticut Mutual Life Insurance Co. I am not appearing here as a representative of that company.

Anyone appearing before a committee which has been holding hearings for so long a time as has this one, can have little hope of adding anything new to what has already been said. Nevertheless, I am taking advantage of the privilege that has been extended of appearing here today because I feel that the women of the country are not sufficiently articulate in matters which deeply concern their business interests. We have in our country a great many women who are dependent upon the success of corporate enterprise. They are dependent upon it because their husbands are deriving their livelihood through it and also because the foresight of others has provided them with trust funds and securities which are the sources of their income.

We must also consider those women who have through their own efforts earned sufficient to enable them to retire on the income from their own corporate investments. None of these women have much contact with the business world and they cannot realize the implications of legislation such as that which we have before us. I feel, therefore, that it is incumbent upon those women who are in business and and who necessarily come in direct contact with the results of corporate regulation to speak in behalf of these other women, many of whom are making valuable contributions to their communities through educational and welfare work.

As I have said, Mr. Chairman, there is little hope of adding anything new to what has already been said, and I hope you will bear with me if I go over matters which you have heard.

Senator O'MAHONEY. We will be very glad to do so.

Miss THOMPSON. Women who are dependent upon the productivity of corporate enterprises are directly affected by any measure that tends to increase or retard that productivity. The mere fact that this measure is receiving serious consideration by this committee is a factor in the continuing lack of business confidence in this country. The bill is in itself an expression of the lack of faith of its sponsors in the integrity and responsibility of the managers of our corporate enterprises.

When we already have the National Labor Relations Act, why is it necessary to make it a condition of obtaining a Federal license that employees shall have the right to organize and bargain collectively? (Section 5 (c).) They already have that right.

When we already have the Federal Trade Commission Act, the scope of which has been broadened by recent amendment, why should there be a duplication of its provisions in this bill? Is it that the Trade Commission Act is unenforceable at present? I do not think

so. This provision in the bill is simply another illustration of the fact that the persons who drew the bill thought that business must be beaten with any stick that comes to hand.

Senator O'MAHONEY. Will you pardon me for interrupting you?

Miss THOMPSON. Certainly.

Senator O'MAHONEY. If you will accept my statement as one of the authors of the bill, we do not wish to use it as a stick to beat business.

Miss THOMPSON. I think possibly that might be so, but it has that appearance.

Senator O'MAHONEY. You will pardon me if I say that I realize there is a good deal of misunderstanding about the objects and purposes of the bill. That is due to the fact that most people do not have the opportunity to study all the facts which are presented to Members of Congress. We just happen to be in a position where we get it from all angles and all around the circle. So that sometimes we really have a little better view of what is going on than persons who are compelled to devote all their time to particular matters.

Miss THOMPSON. When you are dealing with property and business, especially at this time, you are to a certain extent opposed to them in some of the legislation that has been before Congress. I think it is a fact that the majority of the people who are attempting to operate corporate enterprises in this country at the present time are attempting to do it in a fair and honest and upright manner.

Senator O'MAHONEY. Most of them are. I do not hesitate to testify to that anywhere.

Miss THOMPSON. This bill indicates that there is a distrust of businessmen. I do not think it is a distrust for all business. I think we are in agreement about that.

Senator O'MAHONEY. There is nothing of that kind, so far as the sponsors of this bill are concerned. We are not suspicious of business. We do not want to beat it. We want to encourage it. But we see perfectly clear that you cannot encourage and increase business as long as you permit the tremendous concentration of wealth and economic power to continue. Would it interrupt you if I should read one or two little extracts from a statement made in Twentieth Century Fund, because I recognize your intelligence?

Miss THOMPSON. Thank you. It would not interrupt me.

Senator O'MAHONEY. Do you get that?

Miss THOMPSON. I think I have it.

Senator O'MAHONEY. This is put out by a number of very worthy people, some of whom might be entitled to admission to Mr. Lundberg's book. I do not know about that. Edward A. Filene, a very prominent and well-known businessman, is one of its principal promoters. Ralph Flanders, president of the Jones-Lamson Machine Co., is chairman.

Miss THOMPSON. I believe Mr. Lamson is one of the trustees.

Senator O'MAHONEY. I think not. However, he might be. William J. Donovan, formerly assistant to the Attorney General under Mr. Hoover, is one of the members of the special committee in charge of it. Harry W. Laidlaw, director of the League for Industrial Democracy, and the national bureau of Economic Research, is connected with it. Lawrence H. Sloan, vice president of Standard Statistics Co., one of the principal sources of business information, is associated with it, no radical, no brain-truster.

Senator BORAH. And no Senator.

Senator O'MAHONEY. And no Senator. Dexter M. Keezer, president of Reed College. That is too bad. Perhaps a president of a college is out of favor. He was formerly director of the Consumers Advisory Board of the National Recovery Administration.

Speaking of the N. R. A., we must not forget that the suggestion of the N. R. A. first came from the United States Chamber of Commerce. It did not come from anybody else, but the United States Chamber of Commerce, supposed to be an organization of practical businessmen.

What I want to call to your attention is this: In this book it appears that, according to the statistics of income filed with the Bureau of Internal Revenue for 1933, by all corporations of the United States filing their balance sheets, a study of these returns shows that there were 211,586 corporations which had total assets of \$50,000 or less; that though they comprised 54.5 percent of the total number of corporations, more than half of all the corporations that filed income tax returns in 1933, their assets amounted to only 1.4 percent of all the assets returned by all the corporations.

Now, this is a fact which must cause every thoughtful citizen to stop and consider, particularly when it shows that the 594 largest corporations, each reporting total assets of \$50,000,000 or over, and all of them having an average of \$240,000,000, though they constituted less than one-fourth of 1 percent of all the corporations in the United States making such returns, they owned 53.2 percent of all the assets.

Now, take another picture. The total number of corporations is 367,901. Of that number those having assets of less than a million dollars each, including all of the \$50,000 corporations I mentioned a moment ago, constitute 95 percent of the total number of corporations. Now, remember that all the corporations of the United States having assets of \$1,000,000 or less constitute 95 percent of all, and yet they had in the aggregate less than 15 percent of all the assets of all the corporations.

That is a fact which you cannot brush away with an expression of opinion or expression of emotion. It is a cold, stark fact that the wealth of the country is being concentrated in corporate hands, and while that concentration in the hands of a few corporations has been proceeding upon the one hand, the number of persons unemployed has been steadily increasing upon the other. Even in 1928 and 1929, the glorious era of which the previous witness was speaking, there were millions of people within the United States without the ability to get a job. These are figures that, whether we like them or not, we cannot deny. What are we going to do about it—just let it drift? Are we going to let this concentration continue and the increase in unemployment proceed?

Miss THOMPSON. I do not believe the increase in unemployment is necessarily due to what you call concentration.

Senator O'MAHONEY. That might be true, of course. Things that happen concurrently are not necessarily the cause or result of one another.

Miss THOMPSON. I think there is something to be said for the large corporation.

Senator O'MAHONEY. Of course, there are lots of things to be said for the large corporations.

Miss THOMPSON. In the first place, the economy of management which some of them have accomplished has undoubtedly brought down the cost of some of the products which are used all the time.

Senator O'MAHONEY. There is no question about that.

Miss THOMPSON. The very wide distribution of stock on the part of some of them would seem to obviate a good deal of the criticism that we have heard.

Senator O'MAHONEY. None of that criticism has proceeded from either of the authors of this bill.

Miss THOMPSON. I do not think so. But the fact that there is a tremendous number of stockholders and a good many of these corporations seem to me to indicate that the wealth is perhaps administered through a few of these corporate heads, but is actually owned by a tremendous body of stockholders all over the United States, which does not seem to be inherently bad.

Senator O'MAHONEY. It is true that it is owned by a huge number of stockholders. I suppose there are between 10 and 12 million in some of these large corporations. But the fact is, and that is another thing that studious people like yourself must take into consideration, that modern corporations have resulted in an actual divorce of ownership from a responsibility of management. Instances can be multiplied of large corporations in which the management owns only a fraction of the stock. In other words—and this is particularly true of women—hundreds of thousands of women have contributed their money by investment in stock in these large corporations, but they are trusting management for the handling of that money. The facts show repeated instances in which management has, without the consent of the stockholders, paid itself exorbitant returns. I cited the other day the case of the Bethlehem Steel Co., in which it appears that over a period of 13 or 14 years the bonuses paid by the directors of the corporation to the management constituted 80 percent of the total sum distributed at the same time to women and other stockholders in the company.

Miss THOMPSON. Of course, this subsection of section 5 is aimed at that particular abuse. It seems to me that such a situation could have been corrected and should have been corrected by the State that chartered the corporation.

Senator O'MAHONEY. But the point is, the States do not do that. Do you not see? Here is the constitutional theory of this bill: The fathers of this Government gave to Congress, not only the power but the responsibility of regulating commerce among the States. That is our responsibility and we cannot get away from it—either to regulate it or it is unregulated. When it is unregulated then the monopolies take hold.

Miss THOMPSON. It seems to me we already have the antitrust laws, but they have not worked very well. Something should be done to make them work.

Senator O'MAHONEY. That is just what we are trying to do.

Miss THOMPSON. My objection to this bill is that if some corporation should violate the antitrust laws, the corporation stands a chance of having all its property taken away, which I think is confiscation of the property of the stockholders.

Senator O'MAHONEY. I do not believe there will be a penny confiscated if this bill should be enacted into law. There will be no

violation of the antitrust laws. Pardon me for interrupting you. I will soon be testifying myself instead of letting you do it. Proceed, please.

Miss THOMPSON. What does the provision mean that the licensee shall be subject to, comply with, and accept any requirements that may be imposed by the Congress as a condition of its right to engage in commerce? This provision increases the uncertainty of the conditions under which the managers of our corporations must labor.

It seems to me that we cannot hope for a permanent business recovery with anything like stabilized conditions until we can establish some degree of confidence and understanding between business and the Government. This bill indicates that however distrustful businessmen may be of Government, the sponsors of the bill are even more distrustful of business. I submit that better conditions cannot be brought about as long as such a spirit continues.

It seems to me that the Federal Trade Commission has been given arbitrary and inquisitorial powers under the bill. It can compel corporations not otherwise subject to the bill to comply with it, and it can take away the licenses of those which are attempting to comply. The fact that an appeal to the courts is allowed will not be of much help to the stockholders of the corporation which is subject to attack, regardless of the final outcome. The value of its stock is bound to go down while such proceedings are going on, and its management would hardly be able to continue normal business activities. Other controls which already exist are sufficient without the constant threat that its power to do business at all may be taken away. The possibility of arbitrary and tyrannical exercise of power by the Commission is perhaps the worst feature of this bill.

Senator O'MAHONEY. If you can suggest an amendment that will remove that, we will be very glad to follow your suggestion, because we do not want to give tyrannical power to anybody. We want to take it away.

Miss THOMPSON. If I thought this bill would be enacted into law I might have a suggestion, but I hope it will not be enacted. [Applause.]

Senator BORAH. You do not desire to offer any constructive amendments?

Miss THOMPSON. As I go on there may be some.

Senator BORAH. Very well. Proceed.

Miss THOMPSON. That we have in this country succeeded in doing business in the midst of a number of administrative boards and bureaus which already are vested with broad regulatory powers, which have in most instances not been exercised arbitrarily, is no guaranty that this fortunate condition will continue in the future. The way to prevent the arbitrary exercise of power, is not to vest it in any board. I think the point of view inevitably comes into this. I have been counsel for this insurance company for 14 years, and we have endeavored to comply with all the regulations during all this time.

Senator O'MAHONEY. I have a good deal of sympathy with you and everybody else who expresses that kind of view, because I know how difficult it is for you to have any other point of view. For 50 years we have been building up the bureaucracies in Washington. For 50 years we have been giving more and more discretionary power to government to interfere with business. My theory is to put an

end to that sort of thing, and the only way to put an end to it is to establish by law a national rule for national commerce.

Miss THOMPSON. I think that results in a power in Washington superior to the power of these large companies.

Senator O'MAHONEY. My dear lady, that is the inevitable result. You may be interested in something I have here. In 1864 Congress was discussing the National Banking Act. That was an act recommended by President Abraham Lincoln to establish a national banking system; in other words, to incorporate national banks.

Miss THOMPSON. Yes.

Senator O'MAHONEY. And every argument that you are making and that the opposition to this bill is making was made in the debate on that bill. For example, Representative Brooks, of New York, said:

Here is a system of Federal centralization and consolidation never dreamed of by Alexander Hamilton and never ventured to be uttered by any of the monarchist framers of the Constitution in any part of the debates which resulted in the promulgation of the Constitution in 1787.

He was speaking of a bill recommended by President Lincoln.

And here is a statement from the Senator from Vermont. I am sorry Senator Austin is not present. Senator Collamer of Vermont made a most vigorous attack on the proposal for national charters for national banks, and predicted that the bill would destroy State banks. He said:

The derangement caused in business in New England would be utterly destructive of the conditions of society in which I live. It would burst these connections with State banks and carry distress up the sides of all our mountains and to the homes of all our farmers. Indeed, I cannot undertake to draw a picture of the amount of ruin and distress. Many of our States receive their school funds from our State banks.

The Congressional Globe at that time was filled with lamentations of that kind, because of the ruin to the country that would follow the enactment of a national banking law.

Miss THOMPSON. I do not think you can deduce from that experience what experience you are going to have when you have control over all the business of the country. The National Banking Act only covered the banks. This is different. This is much broader.

Senator BORAH. This is no broader than the power to regulate interstate commerce. That is altogether as far as we can go. That power was delegated to the National Government. No one else can do it. That is all we are seeking to do. We are only seeking the regulation of interstate commerce.

Miss THOMPSON. Of course; but by doing so you are imposing upon corporations already in existence tremendous obligations as a condition of obtaining licenses. I did not really intend to go into these things when I started, and perhaps I am not qualified to discuss them, anyway.

Senator BORAH. I think you are well qualified.

Miss THOMPSON. Thank you.

Senator O'MAHONEY. You may proceed.

Miss THOMPSON. Apart from the fundamental objection which I have just mentioned and which goes to the very essence of the bill, there are three other points which should be considered. Before stating them I wish to have it understood that I am not here in behalf of any insurance company or of the interest of insurance

companies. Women have a tremendous stake in insurance companies. They receive millions of dollars every year in payments under life-insurance policies. My own company's death-claim payments last year amounted to \$8,743,653, and a large proportion of that sum went to women. Women are therefore especially interested in the successful management of insurance companies and also of banks in which they have large deposits and which are responsible for the investment of trust funds under which women are beneficiaries.

This bill, although it purports to exclude banking corporations and insurance corporations from the effect of its provisions, in fact, does not do so. Although these corporations are not obliged to take out a Federal license under the act in the first instance, circumstances might arise under which they would be compelled to do so. Banks and insurance companies may be the holders of bonds of corporations coming under the terms of the bill. Supposing that some investment of one of these corporations goes wrong and in order to have a free hand in dealing with the situation, the officers of the corporation think it best to acquire the bonds of minority stockholders, the acquisition of such bonds would presumably bring the corporation within the exception contained in section 14. I am not mentioning the fact that the acquisition of stock might be desirable under similar circumstances because of the acquisition of stock doing the corporation no good as I will point out later. Since these minority holdings would have been acquired in order to assist in the control of licensee corporation, it would also bring the bank or insurance company within the terms of section 2 (j). In other words, the acquisition of such securities in an attempt to pull its chestnuts out of the fire would apparently bring the corporation within the terms of the act, so that in addition to the immediate problems confronting it in connection with its investment, it would also be compelled to comply with the Federal Licensing Act. This would evidently be true even though the original bonds were bought only as an investment.

It also appears that the mutual insurance companies and other corporations without capital stock would be directly and unfortunately affected by the provisions of section 5 (g). Although section 5 purports to deal with the conditions to which licensees shall be subject, the proviso of subsection (g) is not so limited. Subsection (g) sets out as a condition of obtaining a license, that all stockholders or members of the licensee shall have an equal right to vote the number of shares held by them, respectively, at all stockholders' meetings and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder, notwithstanding any provision of its charter for the issuance of nonvoting stock. The extraordinary provision which gives to holders of nonvoting stock a privilege for which they never paid when they purchased their stock takes the attention from the following section. That is the proviso to the effect that no other corporation or association shall be entitled to any such vote or voice directly or indirectly, at any meeting of its stockholders, except that the stockholders of any such corporation or association shall be entitled to cast their pro rata share of the stockholding of such other corporation.

In other words, the proviso prohibits any corporation which may be a stockholder of a Federal licensee, from voting the stock of the licensee, but its stockholders may vote the licensee's stock held by

it, in a pro rata basis. The difficulty of getting the stockholders of, for example, a bank whose stock is widely distributed, to vote the stock that the bank may hold in a licensee on a pro rata or any other basis is apparent. It would mean that large blocks of stock held by banks or other investment institutions would never be voted at all. The proviso is open to the further objection that it prevents the mutual life-insurance companies, universities, mutual savings banks, and charitable organizations or corporations without capital stock from voting the stock they may hold without giving the privilege of voting it to anyone else. They have no stockholders and, therefore, could not meet the requirements of the proviso. I cannot think that this provision is for the best interest of the tremendous number of policyholders who have invested and are investing their money every year in life-insurance policies.

The effect of the provision on the licensee corporations should also be considered. Under the laws of the various States a two-thirds and sometimes a unanimous vote of the stockholders is required for certain important corporate actions. In others a majority vote is required. If large blocks of stock were held by corporations ineligible to vote it the management of the licensee would be paralyzed. The result might be disastrous to the other stockholders of the licensee, as well as unfortunate for those interested in the corporate stockholders.

The last point that I wish to make is that the enforcement of the conditions set out in section 5 might open the door to unexpected results. It seems self-evident that the interpretation of a complicated law such as this would be, necessarily, for many months, if not years, a matter of guesswork, administrative regulation, and court decision. It happens all too frequently that the problems confronting the management of a corporation have no immediate and obvious answer. If some violation of the conditions occurs through mistake as to their meaning, or because the size of the plant prevents detailed supervision by persons familiar with the law, the corporation might be put out of business entirely at tremendous loss to its stockholders. It is also quite conceivable that competing corporations would welcome the opportunity to report such violations and thus eliminate competition.

The constant threat of a complete loss of the business, in the event of a violation, would necessarily hamper the good judgment of the officials and they would also be compelled to consider the drastic penalties that might be inflicted on them personally. I suggest that if this bill were to become law, and be enforced in accordance with its letter, the taxpayers would have to provide special unemployment benefits for corporate officials who accidentally violated it—section 8—and a new penitentiary for those who might have been held to have done so willfully—section 18.

In short, the enactment of this bill into law would certainly have a most adverse affect upon industry in this country and so, upon the many women who are directly or indirectly dependent upon the income from corporate earnings, and for that reason I hope that the bill will never receive a favorable report from this committee.

Senator O'MAHONEY. Does that complete your statement?

Miss THOMPSON. That completes my statement.

Senator O'MAHONEY. You have presented a very interesting statement. We thank you very much. [Applause.]

**STATEMENT OF MISS CATHERINE CURTIS, NATIONAL DIRECTOR,
WOMAN INVESTORS IN AMERICA, INC., NEW YORK CITY, N. Y.**

Senator O'MAHONEY. Miss Curtis, you may proceed. First give your name.

Miss CURTIS. My name is Catherine Curtis and I am national director of Woman Investors in America, Inc., a non-profit-making organization of women investors with national headquarters at 535 Fifth Avenue, New York City, and membership in every State of the Union.

We consider investments in the broadest sense of the word, whether they be in property, in citizenship, or in Government; for we are all investors in America, whether we are bondholders, jobholders, propertyholders, or husbandholders.

Senator O'MAHONEY. Would you consider the latter an investment?

Miss CURTIS. Very much so, Mr. Chairman.

We are primarily interested in financial education for women and financial fact-finding of importance to women, and, on previous occasions, have appeared before the Senate Finance Committee to present the woman's viewpoint on tax problems.

Our organization does not give investment advice, though one of our reasons for being is the protection and preservation of women's property rights through seeking to preserve the underlying values thereof.

This is not our first appearance before the Senate Judiciary Committee in defense of a principle. As national chairman of the Women's National Committee for Hands Off the Supreme Court, sponsored by women investors in America, it was my great honor to appear before this committee May 12 of last year as the official spokesman of over 300,000 women and 19 nationally known women's organizations, protesting the then contemplated changes relative to the Supreme Court.

As I recall it, you sat that day as acting chairman, Senator O'MAHONEY. Our women will never forget the outstanding service you rendered in defense of the principle of an independent judiciary. They have instructed me to tell you and your fellow Senators again of our sincere appreciation and gratitude for your courageous stand in defense of the principle involved in that vital issue.

I would much rather appear before your committee favoring legislation sponsored by gentlemen who made so gallant a fight, but again, defense of principles, in which we whole-heartedly believe, forces me to appear here in opposition to your Federal licensing bill.

In the case of the Supreme Court issue, it was the principle of an independent judiciary. In this case of the Federal licensing of corporations, it involves a principle which we believe to be even more basic and far-reaching—namely the principle of individual ownership of basic property rights.

I am speaking to you today, not as a legal expert or as the representative of business organizations, but rather as one in contact with women in all walks of life in many States who are alarmed and concerned over the welfare of their country, over their own economic independence, whether that is provided by their own economic independence, their jobs, or the business of their menfolk.

These women are perfectly conscious that we are living in a period when there is a world-wide attack upon capitalism. This attack started in Russia and like a highly contagious disease, has encircled the globe. We realize that the epidemic is even now spreading in our own country and may, unless checked, destroy our security, our institutions and home life, and our system of government under which the women of this Nation have enjoyed more luxuries and conveniences, greater independence and freedom, more cultural opportunities than the women of any nation in the world.

It is woman's nature to be sensitive to and fearful of epidemics. It is usually their job to fight them, whether it is chickenpox or small-pox, mumps or measles, typhus or yellow fever, and it appears to us that an attack of "yellow" fever is now paralyzing most of the menfolk of the Nation.

Let me say at this point that one of the purposes of our organization is to preserve and defend capitalism, the capitalistic system if you will, though our definition and understanding of capitalism apparently differs from that of Mr. Willis J. Ballinger of the Federal Trade Commission who appeared before you on March 10 to present his views and recommendations as a proponent of this bill.

How do we define capitalism?

Capital is that part of wealth earned from production, saved and laid by for future production. The individual who has any savings, has capital—and whether newsboy or merchant—is basically a capitalist. The combined savings of our millions of people invested in private enterprise, form the foundation of capitalism. Every luxury, every comfort, every necessity we women enjoy today has been provided for us through this system of capitalism.

We take issue with Mr. Ballinger when he says that "Capitalism has failed and is dead." We not only believe the system of capitalism is very much alive today, but, from our own surveys of the amount of capital owned directly or indirectly by women, we know that the American woman is the greatest of all capitalists, and I doubt that anyone, even a courageous Government economist, would dare state that the American women are dead, whether on their feet, in their mental processes, in their activities in the field of business, or in the determination that their selected defenders shall properly defend them.

Recent surveys by women investors in America disclose that the books of many corporations show that approximately 50 percent of their shares are held by women, proving that the direct ownership and interest of women is very great. A further analysis shows that, in direct ownership, they hold 43 percent of the common stock of an important group of companies, over 50 percent of the preferred stock, and nearly 60 percent of the outstanding bonds of these companies. Their ownership is even greater in the securities best suited for trust funds.

In addition to direct ownership, women are beneficiaries of 80 percent of the life insurance policies now in effect and at the end of 1934, life insurance companies owned about \$9,000,000,000 worth of stocks and bonds. These bonds amounted to over 18 percent of all outstanding railway, public utility, and industrial bonds. The Statistical Abstract of the United States Department of Commerce reveals that on December 31, 1934, there were 115,220,000 life insurance policies in force, with a total face value of \$98,542,411,000 or

an average face value of \$854 and a total face value for the benefit of women beneficiaries of \$78,833,928,800.

Senator AUSTIN. What time was that?

Miss CURTIS. December 31, 1934, from the Statistical Abstract of the United States Department of Commerce.

The assets behind these policies are represented by the stocks and bonds of American industry, in addition to real estate. You could readily understand that, through this indirect ownership alone, women should be vitally interested in any legislation dealing with the corporate structure of American enterprise. You, too, gentlemen, should be vitally interested since it materially affects the insurance estates you may be building for the benefit of your own wives and children.

The wide distribution of savings accounts owned by our people is very much greater than might be assumed from the quotation from an article by Dr. Moulton, recently inserted in the record of these hearings by Senator Borah. This article intimated that those earning \$2,500 a year or less had nothing left for savings and that the greater majority of the savings come from those earning more than \$10,000 a year.

The Statistical Abstract of the United States Department of Commerce shows that on June 30, 1933, there were 39,562,000 depositors of savings accounts. Contrast this figure with the 3,724,000 individuals who made income-tax reports in 1933—and only all single persons with \$1,500 or more income and married persons with \$2,500 or more income had to make returns. These 39,562,000 savings bank depositors were nearly one-half of the total population of the Nation of 10 years or over in age.

The Statistical Abstract shows that the total number of savings bank depositors had increased in 1935 to 41,315,000, with an average account of only \$548.25. It would therefore seem that Dr. Moulton's contention that only those in the higher income brackets are the ones who save money is not quite in accordance with the official figures of the United States Government.

I should like to say at this point that approximately 65 percent of these depositors were women. The income on these deposits is obtained by their reinvestment to a great extent in American business and industry, establishing another great indirect ownership interest which women have in business and industry.

In our opinion, the foregoing figures offer conclusive proof that individual ownership in the corporate structure of this Nation is not centralized as many would have us believe, but rather is widely distributed, and particularly among women.

Is it any wonder that women are vitally interested in this Federal licensing bill since it would replace the present system of property ownership with one of Government permit granted and revoked at will by a Federal commission.

Senator O'MAHONEY. Of course, that is not in the bill.

Miss CURTIS. Well, Senator O'Mahoney, that is the interpretation that we put on the words. It may not be your interpretation.

Senator O'MAHONEY. It could not possibly be the effect, even if it were the intention, from that language.

Miss CURTIS. Proponents of this measure have steadily and persistently maintained that its feature of Federal control, to-wit,

Federal licensing, would eliminate this dread thing known as monopoly. Of course, we women believe that Congress first should find the answer to the question "What is a monopoly?" and then determine what is a "good" and a "bad" monopoly before it begins legislating out of existence that of which we seem to know so little.

We fear that this proposal to pass legislation under such conditions may result in finding that we have permitted the killing of something that is of vital necessity to our every-day life.

However, let us consider the argument of proponents, namely that "Federal licensing will eliminate monopoly."

Do we have today any industry operating under a Federal licensing system?

Of course we do, the radio industry. Here, gentlemen, is an industry that has forsaken its basic property rights for a Federal permit of limited duration and subject to revocation by the will of a Federal commission.

We must remember that the Federal Government did not at once set up the existing system of strict Federal control over radio. Rather, like much Federal encroachment, it has been slow and gradual, step by step, a careful process of educating the public to accept what eventually seems to be the inevitable.

The first step toward this control came in 1912 when the Congress passed a simple law placing the transmissions of "radiograms or signals" under Federal license and subjecting those who failed to comply to a maximum fine of \$500.

Once that law was passed, the Federal Government had its little toe in the door of the radio industry and continued to edge in first its foot, then more and more of its Federal body of control until today, operating under the law of 1934, it has practically absolute control.

Now the radio industry has no basic property rights, such as a newspaper has, but instead a Federal license of only several months' duration, which must be renewed from time to time and is subject to revocation by the Federal Communications Commission.

Senator O'MAHONEY. You know we began issuing Federal licenses almost immediately after this Government was established.

Miss CURTIS. I think that is true. I am speaking of one industry which is very large and important.

The penalties have been steadily increased until today the fines range from \$500 to \$10,000 or 2 years in jail, to absolute revocation of the operating license, thus making the entire investment in plant, equipment, artists, contracts, and so forth, worthless.

The Commission, under this latest law, also has discretionary power as to whether or not it will even renew a license.

The law further declares that the Commission has the power to refuse a license to any concern adjudged guilty of monopolistic practices.

Proponents of the bill before this committee may maintain that no such stringent conditions are set forth in this industrial licensing bill. They were not set forth in the first radio licensing bill.

But has this stringent set of rules and enforcements abolished monopoly in radio?

If we are to believe the recent stories that have been appearing in the press, it has not prevented the creation of monopolies, for we now learn that the Federal Communications Commission itself is

about to investigate a monopoly in this federally licensed, policed, and controlled industry.

If these charges are proved to be true, then it must be definitely accepted that Federal licenses and control has not proved effective in preventing monopoly.

Of course, there are two sides to every picture and, I think we are considering more and more today the reverse side of the picture, particularly where the cry of monopoly is raised.

I firmly believe that women are beginning to take all this hue and cry about monopoly with an exceptionally large grain of salt. We have had so much of it of late, particularly from high Government officials. Unfounded and unproved charges of this dread thing monopoly, which frankly must be regarded today as nothing more than back-yard gossip since none of these officials have come forward and offered any definite example of a specific monopoly.

It is also interesting to note that this hue and cry on the part of high Government officials has been followed by new moves on the part of Government to impose further Federal regulation and control upon the people. We wonder whether it really is founded upon fact or is just an advance publicity campaign for the purpose of educating the people to accept more and more Federal regulation until the last vestige of freedom has been taken from us, not by constitutional action, and with the consent of the people, but through legislative edict and Executive decree?

In this connection I wish to call to your attention the recent remarks of that famous radio commentator and news columnist, Boake Carter, who in commenting on this charge of "monopoly" in the radio industry said in his syndicated column of March 19:

Take a look at these incidents:

An investigation of the three major radio networks is pending in the House of Representatives with charges of monopoly due to be aired.

Four separate columnists have reported that Stephen T. Early, assistant White House secretary and formerly a press reporter is being considered as a possible "czar" for radio functioning in the same way that Will Hays does as "czar" for the movies.

All four columnists write from Washington.

Chairman McNinch, of the F. C. C., has declared to a number of influential people, both in and out of the radio world, that the administration desires to bar news comments from commercial broadcasts; charging that such individuals speak "only the dogma forced upon them by the companies paying for the time;" that the administration cannot compete with a "commentator" (commentor is a much more pleasing word) who is "on the air" 5 or 6 days a week. (Such flattering sophistry.) That a new plan must be devised for discussion of public issues, say 2 hours per night on each of the networks set aside for free discussion.

FREEDOM OF AIR

The Mae West incident brought down upon the heads of radio stations the whack of an official club which was all out of proportion in its severity to the degree of the offense committed.

Mr. McNinch has just proposed all radio stations be taxed on a gross income basis, provided their earnings are more than \$15,000 a year.

The administration, through special channels, quietly informed the National Association of Broadcasters, at the recent annual convention in Washington, that the broadcasters would be "helping out" to a considerable degree if they declined to accept any more commentators than are now to be found on the air.

The White House entertains a desire, which is meeting internal family opposition of the stiffest sort, to set up a Government-controlled radio system, to produce programs listed as "educational."

"SMEAR" CAMPAIGN

Winchell's interesting note "Lowell Thomas met one of F. D. R.'s closest advisers in Montreal a fortnight ago * * *."

The "smear" campaigns to discredit some individuals on the air, the origin of the campaigns being in Washington.

An investigation of radio broadcasting monopoly, conducted "right," could produce testimony showing a picture of chaos, confusion, and private suppression. Such would pave the way for the suggestion (official, of course) that only a czar could properly unscramble the situation, so that the people would get a "true" picture of events. This can be done very simply by quoting that timeworn phrase "in the interest of public convenience and necessity."

OFFICIAL BLESSING

The "radio czar" (with official blessings to speed him on his way) could simply decree no more newscasts on commercial programs, or censor all copy planned for delivery "in the interest of public convenience and necessity." If any commentator had written comments not to the liking of the political powers-that-be, the "radio czar" could deftly slice out the offending references.

Of course, the curbing of free speech as a state of affairs would not be reached quickly, or in such direct fashion. The howl in Congress and the country would wreck the scheme aborning if made so obvious. So what to do?

SO WHAT TO DO?

First, set in motion forces to discredit those now irking the Administration with their comments; such forces to employ the usual technique—propaganda, lies, innuendo, backdoor pressure and genteel terrorism. The victims, in time, will be so plastered with mud that they'll fall through weight of it, even though they be innocent.

From that point on, it is but a simple matter to impress broadcasters—radio stations must renew their license every few months, do not forget, a renewal which is dependent upon official fancies—that it will be healthier for them to eliminate everything except straight news on sustaining time.

The next step is to engage more political time, to present the "official viewpoint," with appropriate explanation and comment.

Let us pass on to another phase of Federal control—that of our security and capital markets. As you may know, they are now operating under strict Government regulation. The volume of business transacted on our security markets in this country has decreased materially, but much of that business transacted even by Americans is being executed in foreign countries such as Canada, England, and Holland. It is claimed by many people that Germany's decline as an important economic power commenced with the Government control of her security markets.

A difficult problem confronted Bismarck in the growing power of the Socialists. He suppressed their political activity for the time being, but characteristically made many features in the Socialist program his own, and initiated a policy of paternalism, which became the foundation of state socialism in Germany.

Germany, and particularly Prussia, then embarked extensively upon a policy of governmental ownership of industrial enterprises. While for the protection of the workingman against accident, sickness, and old age an extensive series of compulsory insurance acts was adopted (1883-89).

Bismarck's insistence that he alone was always right, led to many quarrels which finally resulted in his resignation, but he had laid the ground work of the socialistic doctrine in the German Empire. His successors to the post of chancellor were finally forced to bow to the demands of the Agrarian Party and permit the passage of the German Bourse Act in 1896.

The most illuminative report of the effects of this stringent control act upon the economic life of Germany, was referred to on many occasions by the late J. Edward Meeker, internationally known and respected economist of the New York Stock Exchange.

In reviewing its effect upon German economic life, Mr. Meeker, cited the report of the Deutsche Bank, which stated in 1900:

The prices of all industrial securities have fallen. This decline has been felt all the more as, by reason of the ill-conceived Bourse law, it struck the public with full force without being softened through covering purchases of speculative interests.

Again in 1904:

A serious political surprise would cause the worst panic, because there are no longer any dealers to take up the securities which, at such times, are thrown upon the market by the speculating public.

Again in 1905:

In our last report we referred to the great danger which may be brought about through delaying the revision of the Bourse laws, and we are not pointing to it again because we consider it our duty to impress again and again a wider circle of the public with the economic value of the stock exchange and its important relation to our financial preparedness in times of war.

Again in 1908:

If it had still been necessary to furnish proof of the regrettable fact that the German exchanges are no longer able to accomplish their task—equally important to the welfare of the people as to the standing of the Empire—the trend of events during the past financial year in general, and the result of the last German Government issues in particular, would have furnished that proof.

A speaker before the Third German Bankers' Convention at Hamburg in September 1907 stated:

In spite of the fact that the Bourse law, which is not recognized even by its framers as a complete failure, has injured German economic life very deeply, not only are all conceivable hindrances placed in the way of improving it, but new means are sought for hindering the progress of our industrial life, and for this purpose the legal regulation of deposit banking is proposed.

The German Exchange Act was eventually modified in order to provide a broader market, but unfortunately the damage had already been done.

I would like to remark at this point that really, because of the strict regulation of the securities market in Germany, many people believe that was the reason for Germany's great decline of economic power and, of course, that market went to other countries.

Senator O'MAHONEY. Do you recommend the repeal of the Securities and Exchange Act?

Miss CURTIS. I do not think I would want to discuss that at the present time. I think there are many things about it that are very fine, and I think there are others that are undoubtedly due for modification or change.

The proponents of the bill also maintain that the proposed Federal license control will serve as protection for investors. Is that true?

I do not intend to go into any lengthy discussion of the Federal control of our banking system, except to point out that it is complete and absolute and then cite an example of how such absolute control has operated to the detriment of investors here in the Nation's capital.

I speak of the Park Savings Bank of Washington. This originally was chartered under the laws of the State of Alabama. Despite this,

it later was required, as a bank operating in the District of Columbia, to permit Government regulation and inspection of its books twice a year.

It complied, I am told, with these regulations. Its directors and stockholders trusted in that Government regulation and inspection. With what result?

The State-granted charter of the bank expired. The directors wrote the Alabama corporate officials to renew the charter. Time passed. They continued to send their corporate tax checks to that State, and the State cashed them. Despite the fact that the renewal of the charter had not been returned, a fact which was later uncovered when the bank failed to open after the "bank holiday," the directors apparently assumed the charter had been renewed, else why should Alabama be accepting and cashing its checks?

And what were the auditors from the Comptroller's Office of the Treasury doing all this time? The Federal auditors for which the bank was paying good money?

Senator O'MAHONEY. Do you advance that as an argument in favor of issuing charters by States to corporations to do business in other States?

Miss CURTIS. I am just offering it as evidence that, even with the strict and rigid control over banks by the Federal Government, accidents do happen.

Senator O'MAHONEY. Of course, the Federal Government does not have any legal authority over the structure of a bank chartered by a State. I have no doubt, without having examined the facts in this case, that the investigation by the authorities in Washington were directed to the purely administrative features of the bank, the deposits and notes, and so forth. I would think that the Government inspector would be just as much entitled to assume that the charter had been issued as the directors. If anybody is held responsible, I should think it would lie wholly upon the directors.

Miss CURTIS. On the other hand, if the auditors were regularly going over the books, would it not be assumed they would have that knowledge?

Senator O'MAHONEY. No. They would not think of looking to see whether the charter had been renewed.

Miss CURTIS. It was the very foundation of the bank.

Senator O'MAHONEY. So much so that it would be assumed by any Government inspector, but certainly should not have been assumed by the directors, who knew it had expired.

Miss CURTIS. Did the directors know that until later on?

Senator O'MAHONEY. I am just judging from what you said, that they were sending their checks in, and assumed that it had been renewed.

Miss CURTIS. As you know, the local courts have ruled within the past week failure of the Federal auditors to discover the lack of character and also to uncover certain illegal acts on the part of bank officials, does not act as any protection or release from liability for the directors, despite the fact that they placed complete confidence in Federal department control, as this bill is asking investors to do.

I would also like to note in passing that the Federal Trade Commission's economic advisor, Mr. Ballinger, appearing in favor of this bill and citing what he alleges to be monopolies, charges that 1 per-

cent of the banks now control 89 percent of the resources of the Nation. If this be true—and please note I say if—then I believe Mr. Ballinger proves a very good case against Federal control as preventing monopoly.

Senator O'MAHONEY. It must be proper for the record to make note of the fact that Mr. Ballinger expressly stated that he was not giving his opinion for or against any particular bill.

Miss CURTIS. I did not recall that he made that statement.

Senator O'MAHONEY. He was very careful to avoid committing himself about it.

Miss CURTIS. I recall that he said he was not appearing officially for the Commission.

Senator O'MAHONEY. That is true.

Miss CURTIS. As the Chairman himself has cited, our banking system has been under steadily increasing Federal control for 74 years. Yet, says Mr. Ballinger, 1 percent of the banks control 89 percent of the resources. After 74 years of Federal control. Does that seem to be preventing monopoly?

Senator O'MAHONEY. You speak of Federal banking control, but you have the J. P. Morgan Bank, which is in a very dominant position and does not operate under a Federal charter, but is what is known as a private bank.

Miss CURTIS. Did Mr. Ballinger intend to list any of those banks? It seems to me there was some reference to that made by Senator Borah.

Senator O'MAHONEY. I do not recall about that. Senator Borah might have made such a suggestion.

Miss CURTIS. It would be very interesting to see it.

Senator O'MAHONEY. He might have been referring to the well-known compilation of Berle and Means, in which they made an analysis of some 200 large nonbanking corporations. This twentieth century fund study to which I referred earlier this afternoon also refers in one place to the 574 largest corporations, including banks, and then to the industrial corporations, numbering about 275, as I recall.

Miss CURTIS. Of course, there are a good many people, Senator O'Mahoney, that are not quite reconciled to the material set forth in that book of Berle and Means. You have undoubtedly heard that discussed.

In view of all these facts, women frankly are wondering just what is the underlying purpose of this bill. They are beginning to feel that the recent editorial of the Chicago Tribune perhaps best sets forth the case:

THE CORPORATION AND THE STATE

The O'Mahoney-Borah bill for Federal incorporation has been changed so many times that it no longer represents the original or complete intentions of the authors and their backers. The purpose first revealed was to regulate wages and hours, have something to do with quotas of production, influence prices, control distribution of earnings and profits and level off incomes. The Federal Trade Commission was to administer this authority. It is to be recalled that Rexford Tugwell, when No. 1 brain truster and program maker, suggested Federal chartering of corporations to enable such a body as the Trade Commission eventually to fix quotas of production and to provide capital.

If the Federal incorporation bill as the result of numerous trimmings has become a trial horse rather than a van containing all the equipment it is simply because the proponents are now persuaded that they cannot at this time move in with

the house furnishings complete. The retreat has no other meaning. The bill is not, even now, just for a general incorporation act. Its ulterior purposes are indicated.

Senator O'MAHONEY. May I ask you whether you are adopting these phrases and complements which are being passed along by the Chicago Tribune?

Miss CURTIS. Senator, I am putting this in the record. It is very important, and in connection with this bill.

Senator O'MAHONEY. Do you think the authors of this bill have any ulterior purpose, which means, of course, a hidden purpose, which means, of course, that they are not frank?

Miss CURTIS. Senator O'Mahoney, I do not think you or Senator Borah have. We disapprove of the philosophy behind this bill.

Senator O'MAHONEY. Then you do not understand it thoroughly, because if you did you would approve it.

Miss CURTIS. I have been listening to these hearings for 3 weeks. I am very anxious to go home. I am tired. There is a certain philosophy in the bill which we feel is important and which we do not approve.

Senator O'MAHONEY. Do I correctly understand that you do or do not adopt its complimentary terms?

Miss CURTIS. Well, we are just placing it in the record, Senator O'Mahoney.

Senator O'MAHONEY. Very well.

Miss CURTIS (reading):

When a politician speaking for Government attacks corporations he is acting on an instinct more profound than he realizes. The corporation is not, as its average political opponent would have his hearers believe, a modern creation. It is almost as old as trade. A corporation properly conducted undertakes in cooperative enterprise large projects which except for it can be undertaken only by Government, only by the State.

We say properly conducted. Improperly conducted it may undertake such enterprises, but do so unfairly. The assumption against the corporation is that government is never improperly conducted, whereas we know that its misconduct has been notorious.

Probably the greatest of corporations was the British East India Co. chartered by Queen Elizabeth. It enabled adventurous and enterprising Englishmen of private means to conduct trading enterprises beyond the reach of any one individual. The Dutch under similar charter succeeded. The French failed because their wealth was absorbed by the State. Private individuals did not have the money. The state which had it failed in competition with the English and Dutch corporations because of natural governmental incompetence wherever there was no competent private enterprise.

Colonial America owed its founding to corporations of which the state became jealous and envious, and quickly in the case of the Virginia Co., more slowly in Massachusetts, suppressed and destroyed. They reemerged as democratic States. Government will create these instruments of private enterprise because it itself is incompetent, corrupt, lacks enterprise and understanding. Then when it observes the success of what it has chartered its deep instinct is to destroy the organization of citizens or seize its profits to break it up, take over its affairs, or control them.

The subject cannot be discussed in brief, but one point can be suggested. A properly conducted corporation not only offers to an almost unlimited number of citizens the opportunity to join in a great enterprise and share in profits, using savings for that purpose, but so long as that corporation can be profitably managed it affords social security through investment. Thrifty people have provided for their future by buying stocks and bonds. If the corporation is honestly managed, competently conducted, and does not encounter governmental opposition or unexpected economic misfortune, the social security offered is reliable.

The Government now is in the social-security business. It supports itself in this enterprise by pay-roll taxes. Its innate hostility, its centuries-old hostility to

organizations of private enterprise in competition causes the Government, whether it really understands what it is doing or not, to break down the system of private investment and security by a series of attacks, direct or oblique.

The State's instinct of self-preservation causes it to view the more competent corporate organization of its citizens with envy and alarm. The sloth, untrustworthiness, and incompetence of government do not permit it to have or exercise creative talents, but it has authority and it has public money. These it can use to destroy. For illustration, we need look no farther than T. V. A. and what it is intended to do to the public utility corporations.

It is the savings of our people invested in corporate securities that provides for the development and expansion of business. If investors lack confidence and will not purchase the securities of industry, the investment bankers offering these securities to the public are unable to dispose of them because of the investors' unwillingness to buy. It is fear that is freezing our capital and capital markets. Increase that fear and you will bring the industrial and economic life of the Nation to its knees, its very life-strength so weakened that it will be a ready and easy victim of any new developments.

The women of the Nation will not exchange their present right to individual ownership of basic property rights for a tiny piece of a Federal license revocable at the will of some Federal commissioner appointed to office and not elected as a representative of the people.

Pass this legislation and I believe the women investors of the Nation will demand the return of their capital investments in corporate securities which will be affected by this measure and once more they will return to the old days of "sugar bowl hoarding."

Gentlemen, we are serious in these declarations.

If you wish to protect the women of this Nation—and we believe you do—we beg you to drop consideration of this Federal principle.

You have asked repeatedly for a counter plan to aid the Nation in its recovery from the present slump. We believe we have one. Here it is:

1. Let Congress halt its investigation of the acts of industry and investigate its own acts which have been harmful to industry.

2. Declare a moratorium on all legislation harmful to industry.

We believe that much legislation has been passed in the last several years that has provided brakes to the capitalistic system thereby restraining it from functioning normally.

3. We urge you to name a capable nonpartisan fact-finding committee to study these various laws and their effect upon our industrial and economic life in order to determine what ones are retarding the economic machinery, then repeal them at once.

Only in this way, we believe, will this repression of the natural forces of capitalism and private enterprise from which we are suffering today be corrected.

As the largest group of capitalists in the country we look to you to withdraw this Federal licensing bill and to devote your time and energies to a constructive program that will bring us out of our present repression while preserving for use the fundamental system of private enterprise provided for in our Constitution. The women of the country would wholeheartedly cooperate with you in such a program.

Gentlemen, we appreciate your cooperation and consideration.
[Applause.]

We would like the opportunity of adding for the record some additional statistics which might be of interest to you, and possibly several resolutions that will be short.

Senator O'MAHONEY. Make them short. We do not want to burden the record.

Miss CURTIS. I want to say again how much we appreciate your cooperation. We know how busy you are.

STATEMENT OF MRS. GLADYS B. STEWART, AVA, MO.

Senator O'MAHONEY. Mrs. Stewart, we will hear you now.

Mrs. STEWART. Mr. Chairman, I feel that I would not be justified in taking up the time of the committee. The two speakers who have just finished have covered the points I would have covered. I am sure I would not be able to add any knowledge to the——

Senator O'MAHONEY. You might very easily do that.

Mrs. STEWART. These two ladies have brought out the points I had in mind if I said anything to the committee. I think it would be repetition for me to do it, and I do not think I would be justified in taking up your time.

Senator AUSTIN. In order to have the benefit of your background, do you endorse what they said?

Mrs. STEWART. Largely.

Senator AUSTIN. I would like to have the record show your residence. You are from Missouri?

Mrs. STEWART. Yes.

Senator O'MAHONEY. Of course, she would not wholly.

Senator AUSTIN. What is your town?

Mrs. STEWART. Ava, Douglas County.

Senator AUSTIN. Have you served on the judiciary of the State of Missouri?

Mrs. STEWART. I am a member of the State legislature judiciary committee.

Senator AUSTIN. Have you been a circuit judge in Missouri?

Mrs. STEWART. Yes.

Senator AUSTIN. You are now the only woman member of the Legislature of Missouri?

Mrs. STEWART. Yes.

Senator AUSTIN. And you have been assistant United States attorney?

Mrs. STEWART. Yes.

Senator O'MAHONEY. We would be very happy to let you make a statement, if you care to.

Mrs. STEWART. Thank you. I do not think I should take up your time, for the points I have in mind have already been covered.

Senator O'MAHONEY. We would be very glad to have you point out the instances in which you disagree with the other witnesses.

Mrs. STEWART. I do not think they would be important enough to justify taking up your time.

Senator O'MAHONEY. I want to make the public announcement that the committee will now recess until Thursday morning at 10:30, at which time two witnesses are expected to appear. With the testimony of those witnesses, the hearing will close, for the present, at least.

(Whereupon, at 4:30 p. m., a recess was taken until Thursday, March 24, 1938, at 10:30 a. m.)

FEDERAL LICENSING OF CORPORATIONS

THURSDAY, MARCH 24, 1938

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met, pursuant to recess, in room 318, Senate Office Building, at 10:30 a. m., Senator Joseph C. O'Mahoney (chairman) presiding.

STATEMENT OF B. L. KNOWLES, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Senator O'MAHONEY. You may proceed, by first giving your name.

Mr. KNOWLES. My name is B. L. Knowles. I am field engineer of the Associated General Contractors of America, a nonprofit association of general contractors who perform possibly in excess of 65 percent of all the contracting that is done by contractors in the United States. This statement is made in behalf of our managing director, Mr. Edward J. Harding.

The Associated General Contractors of America presents this statement in opposition to the bill, S. 3072, of course, because its members are vitally interested in any effect that its passage might possibly have upon the corporate structure of firms engaged in construction operations. The association's most serious concern, however, lies deeper than that; namely, in the disastrous effects that the enactment of this measure would in our opinion inevitably have upon the market for construction, and hence upon reemployment of labor and capital in private industry. That the Government has sought relief from the unemployment evil chiefly through the medium of construction is a well-known fact. Many of those high in the administration have repeatedly asserted that a revival of the construction industry through the investment of private capital would provide the most efficient means of effecting immediate reemployment. The very basic character of our industry and the tremendously widespread influence upon the nation of its prosperity or lack thereof makes it most important to give careful consideration to the effect which the passage of any proposed legislation might have upon the construction market.

The members of this committee have frequently requested throughout these hearings that the witnesses manifest a cooperative spirit in the attempted solution of the problems which this measure is designed to bring about. That we may qualify as a cooperative witness, we should like to state that our association has from its very inception placed at the disposal of the Government and all its bureaus, departments, and commissions having any connection whatsoever with

the construction industry, all of its facilities. It has cooperated with these departments and bureaus to the fullest extent and we believe we may state with all modesty that it enjoys the confidence and respect of these Government agencies.

Our association is made up chiefly of those contractors who have built and are building America, and we believe that the voice of this industry is important at this juncture.

Industrial expansion and construction is undertaken as a long-term investment. A merchant or a manufacturer must look a considerable distance into the future before he can wisely shape his course with reference to the expansion of his plant. He must give due consideration, of course, to the normal hazards of business; to the ordinary fluctuations in values and the economic adjustments which must necessarily be made from time to time in the conduct of his affairs. His aim, of course, is to utilize his plant in such a manner as to derive from it a reasonable return on his investment during its economic life.

These considerations make his problem difficult enough, but if in addition he foresees years of certain uncertainty, an entire lack of assurance of immunity from destructive business baiting—if he envisions a host of entirely abnormal hazards which provide a constant threat to his very business existence, he will, of course, positively decline to give consideration to a program of expansion irrespective of any immediate needs therefor that may exist. That this bill will create that uncertainty, that it is bound to lead to business-baiting, and that it creates entirely abnormal and needless business hazards is thoroughly evident to us as we read the measure. What, then, will be the effect of the dark cloud of doubt and apprehension which will certainly spread over the business of this country should this legislation be enacted? What will be the result with respect to the country's most urgent problem, reemployment?

Our association makes surveys at more or less frequent intervals of the potential market for construction in its various fields. Such a survey was made a few months ago to determine the value of construction for mercantile and industrial purposes which might be expected to be put on the market within a year, under reasonably favorable business and credit conditions. We learned that undoubtedly the volume of this market is somewhat in excess of a billion dollars. I might say that this estimate is away below the normal expectation in that field.

It should be borne in mind that this does not include housing or public buildings. The award of contracts for this construction would mean an income to workers in the construction and allied industries of over \$800,000,000. We include, of course, those workers engaged in the production of construction materials and equipment as well as those engaged immediately at the site of construction. To destroy this market, and we are certain that that would be the result of the enactment of this legislation, would simply mean that these workers would not receive this income, and if the passage of this and/or other legislation that imposes threatening onerous and restrictive regulations tending to hamper the development of industrial expansion be accomplished, the desire of the Administration to have the construction industry do its part in "taking up the slack" through the investment of private capital in construction projects, simply cannot be realized.

I would like to relate a little incident at this point out of my own experience. Less than 3 weeks ago I was talking to a New England manufacturer. My home is in Massachusetts. He employs in the vicinity of 500 skilled employees, men and women, and he has been contemplating for some time the expansion of his plant. He asked me about this bill and what I thought with respect to its being favorably reported.

In the course of our conversation he said:

I am planning an expansion program which may seem small to you, but it represents about \$25,000 investment, and if it comes about it will cause me to employ about 150 more people and give jobs to a good many workers in the construction industry.

And he said:

If this bill should pass, I simply will not expand my plant.

Similar statements to that have been made to me by many manufacturers and industrialists.

Senator O'MAHONEY. On what do you think he based that fear?

Mr. KNOWLES. I think that what I am going to say in my statement will clarify that point.

Senator O'MAHONEY. Very well.

Mr. KNOWLES. To go into a detailed discussion of the measure section by section, giving our objections, would be simply to restate much that has been most ably said by previous witnesses; therefore, we shall not attempt it.

To summarize, then, we wish to state that we are opposed to this bill because there is so much uncertainty in its language that it is bound to give rise to honest difference of opinion and uncertainty as to what constitutes "dishonest or fraudulent trade practices and unfair methods of competition" as differentiated from legitimate business acumen and production efficiency.

We object to the bill because, so far as we know, no one has ever officially defined what constitutes monopoly in restraint of trade, and hence, industry, however well intentioned, would not have the slightest idea of what it might or might not legitimately do by way of development and expansion.

Senator O'MAHONEY. Would it cause you very much inconvenience if I should undertake to give the point of view of former President Taft with respect to monopoly?

Mr. KNOWLES. It would not disturb me in the least.

Senator O'MAHONEY. I think you may be interested in it. I think that the ladies here might be interested in it. Bear in mind that this is not a radical talking; this is William Howard Taft, President of the United States for 4 years and later Chief Justice of the United States.

On January 7, 1910, he sent a message to Congress on Federal incorporation, in which he said:

There has been a marked tendency in business in this country for 40 years last past toward combination of capital and plant in manufacture, sale, and transportation. The moving causes have been several: First, it has rendered possible great economy; second, by a union of former competitors it has reduced the probability of excessive competition; and, third, if the combination has been extensive enough, and certain methods in the treatment of competitors and customers have been adopted, the combiners have secured a monopoly and complete control of prices or rates.

A combination successful in achieving complete control over a particular line of manufacture has frequently been called a trust. I presume that the deriva-

tion of the word is to be explained by the fact that a usual method of carrying out the plan of the combination has been to put the capital and plants of various individuals, firms, and corporations engaged in the same business under the control of trustees.

The increase in the capital of a business for the purpose of reducing cost of production and effecting economy in the management has become as essential in modern progress as the change from the hand tool to the machine. When, therefore, we come to construe the object of Congress in adopting the so-called Sherman Antitrust Act in 1890, whereby in the first section every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of interstate or foreign trade or commerce, is condemned as unlawful and made subject to indictment and restraint by injunction; and whereby in the second section every monopoly or attempt to monopolize, and every combination or conspiracy with other persons to monopolize any part of interstate trade or commerce, is denounced as illegal and made subject to similar punishment or restraint, we must infer that the evil aimed at was not the mere bigness of the enterprise, but it was the aggregation of capital and plants with the express or implied intent to restrain interstate or foreign commerce, or to monopolize it in whole or in part.

Monopoly destroys competition utterly, and the restraint of the full and free operation of competition has a tendency to restrain commerce and trade. A combination of persons, formerly engaged in trade as partnerships or corporations or otherwise, of course, eliminates the competition that existed between them; but the incidental ending of that competition is not to be regarded as necessarily a direct restraint of trade, unless of such an all-embracing character that the intention and effect to restrain trade are apparent from the circumstances, or are expressly declared to be the object of the combination. A merely incidental restraint of trade and competition is not within the inhibition of the act, but it is where the combination or conspiracy or contract is inevitably and directly a substantial restraint of competition, and so a restraint of trade, that the statute is violated.

The second section of the act is a supplement of the first. A direct restraint of trade, such as is condemned in the first section, if successful and used to suppress competition, is one of the commonest methods of securing a trade monopoly, condemned in the second section.

It is possible for the owners of a business of manufacturing and selling useful articles of merchandise so to conduct their business as not to violate the inhibitions of the antitrust law and yet to secure to themselves the benefit of the economies of management and of production due to the concentration under one control of large capital and many plants. If they use no other inducement than the constant low price of their product and its good quality to attract custom, and their business is a profitable one, they violate no law. If their actual competitors are small in comparison with the total capital invested, the prospect of new investments of capital by others in such a profitable business is sufficiently near and potential to restrain them in the prices at which they sell their product. But if they attempt by a use of their preponderating capital and by a sale of their goods temporarily at unduly low prices to drive out of business their competitors, or if they attempt, by exclusive contracts with their patrons and threats of non-dealing except upon such contracts, or by other methods of a similar character, to use the largeness of their resources and the extent of their output compared with the total output as a means of compelling custom and frightening off competition, they then disclose a purpose to restrain trade and to establish a monopoly and violate the act.

The object of the antitrust law was to suppress the abuses of business of the kind described. It was not to interfere with a great volume of capital which, concentrated under one organization, reduced the cost of production and made its profit thereby, and took no advantage of its size by methods akin to duress to stifle competition with it.

I wish to make this distinction as emphatic as possible, because I conceive that nothing could happen more destructive to the prosperity of this country than the loss of that great economy in production which has been and will be effected in all manufacturing lines by the employment of large capital under one management. I do not mean to say that there is not a limit beyond which the economy of management by the enlargement of plant ceases; and where this happens and combination continues beyond this point, the very fact shows intent to monopolize and not to economize.

The original purpose of many combinations of capital in this country was not confined to the legitimate and proper object of reducing the cost of production.

On the contrary, the history of most trades will show at times a feverish desire to unite by purchase, combination, or otherwise all the plants in the country engaged in the manufacture of a particular line of goods. The idea was rife that thereby a monopoly could be effected and a control of prices brought about which would inure to the profit of those engaged in the combination. The path of commerce is strewn with failures of such combinations. Their projectors found that the union of all the plants did not prevent competition, especially where proper economy had not been pursued in the purchase of and in the conduct of the business after the aggregation was complete. There were enough, however, of such successful combinations to arouse the fears of good, patriotic men as to the results of a continuance of this movement toward the concentration in the hands of a few of the absolute control of the prices of all manufactured goods.

The antitrust statute was passed in 1890 and prosecutions were soon begun under it. In the case of the *United States v. Knight*, known as the *Sugar Trust* case, because of the narrow scope of the pleadings, the combination sought to be enjoined was held not to be included within the prohibition of the act, because the averments did not go beyond the mere acquisition of manufacturing plants for the refining of sugar, and did not include that of a direct and intended restraint upon trade and commerce in the sale and delivery of sugar across State boundaries and in foreign commerce. The result of the *Sugar Trust* case was not happy, in that it gave other companies and combinations seeking a similar method of making profit by establishing an absolute control and monopoly in a particular line of manufacture a sense of immunity against prosecution in the Federal jurisdiction; and where that jurisdiction is barred in respect to a business which is necessarily commensurate with the boundaries of the country, no State prosecution is able to supply the needed machinery for adequate restraint of punishment.

In other words, the purpose of the antitrust law is to prevent combinations which restrain the free enterprise of free American citizens, to borrow the phrase so frequently used by those who attack any attempt upon the part of government to restrain the concentration of capital and economic power which has been proceeding in this country at such a rate that it has been the cause of the unemployment problem with which we are struggling. I am going to put this message in the record for the benefit of those who may read it afterwards.

Miss CATHRINE CURTIS. Mr. Chairman, you referred to former President Taft. May I say just a word?

Senator O'MAHONEY. Yes.

Miss CURTIS. In 1919 Mr. Taft said he was only wrong once in his life, and that was all the time.

Senator O'MAHONEY. Of course, he said that facetiously.

Miss CURTIS. No; I did not intend to be facetious. That is just what he said.

Senator O'MAHONEY. I said that former President Taft was being facetious. Is it your testimony that you agree with his remark?

Miss CURTIS. I do not think I care to answer that.

Senator O'MAHONEY. Then you are being facetious.

Miss CURTIS. No; I was just stating a fact.

Senator O'MAHONEY. You may proceed, Mr. Knowles.

Mr. KNOWLES. By way of comment on the statement you just read, I notice the construction of the sentences was such that practically every sentence began with the word "if"—"if" this corporation did so-and-so, or, "if" certain things were done for the purpose of perpetuating reprehensible practices, and so forth, it was very definitely stated that those were evil practices and should be condemned.

Senator O'MAHONEY. The managers of any corporation or any business enterprise are under no delusion whatsoever when they enter into an agreement with others engaged in the same line of business for the purpose of throttling competition and driving somebody else out.

When they go into a particular territory and sell their commodities at unduly low prices, in order to cut off competition in that locality, they know what they are doing. They do not have to come to the government to understand whether or not they are violating the anti-trust laws. They know what they are doing when they start out.

Mr. KNOWLES. When they start out to do it for that purpose, of course, they know it.

Senator O'MAHONEY. That is all we are trying to prohibit or control.

Mr. KNOWLES. In my opinion, you are going to accomplish far more evil than good by the proposal outlined in this bill.

I remember when I began to drive an automobile, if I got a tire that was guaranteed for 4,000 miles, for which I paid \$40 or \$50, and it fulfilled its guarantee, I thought I had something. I know the tire companies came in for pretty severe berating at the hands of Mr. Ballinger before this committee the other day. I know that today for \$15 I get a tire that will carry me 30,000 miles, and I can get any one of several makes of tire and get excellent results. That is a condition which would not have been possible had it not been for the amassing of the resources of the tire companies.

I can buy an automobile today for \$750, one of several makes of automobiles. I can have my choice, and I can get a car for that amount that is equal in quality and performance and durability to an automobile that I bought 5 years ago for \$2,000. That is also accomplished through the amassing of the resources.

Senator O'MAHONEY. There is no doubt about that.

Mr. KNOWLES. I know that in my own line of business, that of a contractor and construction engineer, steel sash has been manufactured for years and years, probably 100 years, and iron sash was manufactured in England many generations ago. Now steel sash, because of the amassing of the resources of the steel companies, are manufactured considerably cheaper and very much better than they ever were before and, as a matter of fact, cheaper than good wooden sash.

Senator O'MAHONEY. Speaking of the steel companies, you are aware of the fact, I assume, that when the United States Steel Corporation was organized, Andrew Carnegie and the owners of the other independent establishments which were brought into the combination were paid, either in preferred stock or in bonds, to the total value of their plant, and on top of that there was piled a vast structure of common stock which was made valuable by reason of the high prices which the Steel Corporation charged. In other words, there was a tax levied upon all the users of steel throughout the United States in order to make that watered stock good. Is that not true?

Mr. KNOWLES. I do not know.

Senator O'MAHONEY. Well, every student of the problem acknowledges that.

Mr. KNOWLES. I am not an economist, and do not pretend to understand corporation law. Personally, I am perfectly willing to concede that undoubtedly many corporations, like many individuals in all fields of human endeavor, including public life, are continually participating in reprehensible practices. I do not think that everyone who does so should necessarily be destroyed, neither do I feel that we should pursue the policy that has been attributed to the sheep rancher. You come from a ranch country, so you will understand this. He

decided that he was going to get rid of the sheep ticks, and he was going to accomplish that by the use of a certain solution on the sheep. He succeeded in taking the fleece off all his sheep. Some of them died, and he did not get rid of the ticks. You never will get rid of sheep ticks.

Senator O'MAHONEY. I am very much afraid that may apply to monopolies.

Mr. KNOWLES. That may be so, and you might go further than monopolies and find a lot of other people who are guilty of reprehensible practices.

According to the testimony recently presented to this committee by Mr. Ballinger, economic adviser of the Federal Trade Commission, the mere magnitude of a corporation would be sufficient ground for the termination of its corporate existence. To what stature shall a corporation be allowed to grow before it is ready for the slaughter? Nobody knows.

Senator O'MAHONEY. I hope you do not mind my interrupting you to say that it is not the purpose of this bill to slaughter any corporations. We are trying to prevent the slaughter of corporations, and unless something of that kind is done you may rest assured that they will reach that point.

The news that comes from Mexico of the expropriation of the Standard Oil companies down there is an indication of what takes place when you find great numbers of people unemployed who are dissatisfied with the conditions in which they live. They just will not tolerate it. In this country they are not going to stay on relief or a miserable dole for any great length of time. Eventually we have got to find some way to restore complete economic independence, and it is my conviction, Mr. Witness, that that cannot be accomplished until we lay down a national rule for national commerce. That rule can be laid down in a way that will not do any injury to anybody and will prohibit only those things which everybody recognizes are wrong.

So I am urging businessmen like yourself to cooperate with us in agreeing upon the things which should be voluntarily foregone by business management, so that business may not be restrained and so we may turn away from big government and let enterprise employ the masses of the people again.

Pardon me for interrupting you.

Mr. KNOWLES. Senator, as I stated to you before this hearing began, a witness appearing before your committee and commenting with respect to the purposes of this bill is behind the eight ball right off, because every witness naturally wants to create a favorable impression with the committee.

Senator O'MAHONEY. Do not worry about the impression.

Mr. KNOWLES. I am not worrying at all.

Senator O'MAHONEY. You have made a very nice impression upon me, and you can say anything you please.

Mr. KNOWLES. I am not worrying. I am a contractor, and I am not in the habit of pulling my punches, and I am not going to now.

Senator O'MAHONEY. That is fine.

Mr. KNOWLES. I have heard a good many questions asked about the purposes of this bill, and I would be the last one in the world to

attribute any ulterior motive in the writing of this to you or to Senator Borah. To talk about the purposes of a measure in the abstract, without giving full consideration to the means by which those purposes are to be accomplished, is in my mind impossible. One might very readily say that a piece of legislation which was designed to make it entirely within the range of every man in the world to provide an adequate income for his family, might have a very good purpose behind it. It certainly is a laudable purpose to see that everybody is provided with an adequate income. That is a laudable purpose. But if in the accomplishment of that purpose it is found the law is going to operate to permit anybody to bludgeon anybody else who happens to have more than they have, then you have got a right to question the immediate purpose of the bill.

Senator O'MAHONEY. Of course, the trouble with our present system, and the system which will exist as long as we do nothing, is that a few individuals are now permitted to bludgeon small business. You talk about business baiting. The business baiting that goes on in this country proceeds from the hands of men like Samuel Insull. There is where your business baiting goes on. There is where small individual enterprise is throttled at the very outset. Let us protect business from that sort of baiting.

Mr. KNOWLES. I suppose, Senator, there is no business in the world that is quite so highly competitive as the contracting business.

Senator O'MAHONEY. I think that is correct. But there is no business in the world in which more real-estate bonds have gone sour in the hands of widows and orphans than the bonds which have been issued for the construction of buildings.

Mr. KNOWLES. Do not blame that on the construction industry.

Senator O'MAHONEY. No; but we will blame it on the conditions this bill is trying to cure. The trouble is that so many witnesses come here, so many critics come and say these things are wrong. They say, "Monopoly is wrong, of course. We condemn it. These dishonest devices which are used are utterly wrong. They should not be tolerated." But the minute anyone suggests a method by which they may be prevented, then the cry is, "No; don't do anything."

Mr. KNOWLES. That is not my cry.

Senator O'MAHONEY. No; perhaps not, but give us a constructive suggestion.

Mr. KNOWLES. I say that this bill will not accomplish those purposes.

Senator O'MAHONEY. Then give us a constructive suggestion.

Mr. KNOWLES. I will do just that.

Senator O'MAHONEY. I am quite ready to admit this bill is not perfect.

Mr. KNOWLES. I have heard you say that before, and I am fully inclined to agree with you.

We are opposed to the enactment of this bill because we are certain that the immediate and direct result would be to increase unemployment in industry generally and to defer indefinitely reemployment in the construction industry in the field of industrial and mercantile building.

Finally, we plead for the rejection of this bill because it definitely prescribes a major operation upon industry, and, in its present weakened and anemic condition, the patient simply can't take it.

Now, Mr. Chairman, I would like to tell you a story right out of my own experience that illustrates exactly what I mean by "business baiting." A few weeks ago I was in New England, driving through a town, the principal industry of which has been for generations a prosperous manufacturing establishment. I had had the pleasure of building additions from time to time to that plant for the owner. The man who owned that plant called everybody in his mill by their first names, and they called him by his first name. When I drove down the street I knew the mill was idle, and I knew the kind of baiting to which that manufacturer had been subjected during the past 3 or 4 years.

Seated on a bench beside the street were a number of his former employees, who I knew, with whom I had made acquaintance as I was building that plant. I stopped and talked to them. They told me that they had not had any employment steadily except on W. P. A. since the mill had closed a year and a half before, and they expressed the greatest regret that the mill had been dismantled and would never be used again as a manufacturing plant in the line in which it had been formerly used and had provided adequate income for practically all the people who lived in that New England village.

I said to them, "Well, don't you remember, as I seem to remember, that you fellows asked for this?" And they said, "Yes, we did, and how we regret it." They presented pathetic figures.

I drove down the street farther, and out on the porch of a house sat the former proprietor of this industry, and he presented, I assure you, although he was fairly well fixed with this world's goods, a far more pathetic figure than those men that had not been working. He had run his mill for years at a tremendous loss, only to have his industrial throat cut by business baiting, not by destructive competition of corporations larger than his, of which there were many, but by business baiting in one form or another.

Mr. Chairman, to my mind, it is not a complicated problem to see that the unemployed are to a great extent reemployed. You stated a few moments ago, and this may be very relevant, that the people now on relief are not going to be content to stay on relief. I wish to heaven I thought that were so, Mr. Chairman.

If you had had a little experience in trying to get help on a construction job in a locality where the W. P. A. was going strong, you would know whether they would rather stay on relief and get the money they get from relief or whether they would rather do a reasonable day's work for 5 days a week in the construction industry; good skilled men, too, but that is another story.

Senator O'MAHONEY. You do not really mean to imply that the majority of those on relief are of that character, do you?

Mr. KNOWLES. It is pretty hard to say there is a majority, but I will say there is a tremendous quantity of them, a tremendous quantity that are perfectly satisfied to accept what they get from W. P. A., where they do not really have to do a real hard day's work.

Senator O'MAHONEY. But actually the figures do not bear that out. If you are interested in the figures, you can get them. The turn-over in the W. P. A. is very rapid and has been all through these stages.

Mr. KNOWLES. Certainly.

Senator O'MAHONEY. People come on and go off as soon as they can, if they can obtain private employment. Of course, there are exceptions.

Mr. KNOWLES. You bet there are.

Senator O'MAHONEY. But that condition you describe does not represent the character of the unemployed American. I have more faith in the people of this country than you have, if that represents your judgment of the character of the unemployed.

Mr. KNOWLES. I do not say that represents the character of the unemployed.

Senator O'MAHONEY. I am glad that you do not.

Mr. KNOWLES. I do say for some years they have been educated into ways that are not characteristic of the American.

Now, one more thing about the economic life of construction, and then I am through. I had a contract to build a large railroad bridge not so very long ago, and in order to build it I had to provide the means of taking a two-track railroad over by-pass trestle, and it involved the construction of a very long and heavy trestle, for the New York Central system.

I had to purchase a very large quantity of extra heavy timber. I succeeded in getting some unusually heavy timber, unusually fine quality, of very large sizes, and I was quite surprised that I was able to get it. I felt considerable curiosity about it, and saw the man who sold it to me, and found that it came out of a textile mill that I myself had built 10 years before, one of the finest textile mills of its kind in the United States, that had been razed, torn down, dismantled, to save taxes, after only 10 years of use. And that destruction took place as the result of what I call business baiting, which perhaps is not the same thing that you characterize as such.

It is not a complex problem to effect reemployment, as I see it. After all, it is the corporation that gives jobs to workmen, and if the corporation is throttled in its legitimate undertaking by way of expansion and development—and I am certain this bill will accomplish that, even though its purposes are not in that direction—I cannot see how a manufacturer or an industrialist or a merchant can be expected to give jobs to people who need them, if he knows he is going to be annihilated or take the chance of being annihilated, especially if he grows so big that in the mind of some other mortal man he is so big as to make it tough for some of his smaller competitors.

Mr. Haake gave some testimony that was very interesting. The same conditions prevail in the construction industry. I have heard small contractors complain that some other contractor took contracts below cost in order to put them out of business. I know that has undoubtedly in some cases happened. I do not believe it has happened by intent, but undoubtedly there are errors of judgment, and certainly contractors often take contracts below cost. I have done it myself, to my sorrow, not by intent, I assure you. But if men are going to be employed, corporations have got to live. They cannot be put out of business at the will or pleasure of other mortals, just because they have a different idea of what constitutes monopoly in restraint of trade from that opinion which is entertained by the officers of the corporation.

I am not prepared to admit that the evils in the corporate structure in the United States are anywhere near equal in magnitude to the

beneficent effects which this country is reasonably deriving and has derived from the amassing of capital in the large corporate interests. If we do away with the large corporations, the development of inventions, the improvement of all kinds of materials and conveniences and the gadgets that people want in their homes today for their convenience, will absolutely be throttled, in my opinion. It is only by the amassing of capital that those things develop and can take place.

Senator O'MAHONEY. You are not talking about the bill now, because this bill is not intended to and will not have the effect of destroying any corporation. So many of you who testify—almost all of you, I may say—set up a straw man. You may not do it consciously, but you are talking about something that does not exist.

Mr. KNOWLES. It exists in the language of this bill, if I understand English.

Senator O'MAHONEY. Not at all. Even if it did, as Senator Borah and I have frequently said, all you have to do is to point out those things and make some constructive suggestions, and we shall be glad to eliminate any such language. All we want to do is to set down the standards so clearly in the law that nobody can possibly misunderstand.

Let me say just this word before we call the next witness. A corporation arises by reason of a contract, one party to the contract being the State and the other party to the contract being the private individuals who want the privilege of doing business in the corporate form.

The charter of a corporation is that contract. The principle upon which we are acting is that in the public interest, the public Government which has jurisdiction over the field of interstate and foreign commerce is the Government which should write that contract, and not a State government which does not have the power nor the jurisdiction to govern in that field.

Now, once you get it into your head—and I am not speaking personally, you understand; I am using the expression in an all-inclusive sense—once you get it into your heads that the purpose is to write a contract by which the businessman who associates with others in a corporation will know exactly what he can or cannot do, when he reads his charter, then you will realize that you have put an end to Government interference and have done away with the very things against which you are clamoring.

Mr. KNOWLES. As chairman of these hearings, you have a right to the last word.

Senator O'MAHONEY. I will give it to you.

Mr. KNOWLES. All right. You said if he reads his charter he knows what he can do.

Senator O'MAHONEY. That is right.

Mr. KNOWLES. But he does not know, according to this bill.

Senator O'MAHONEY. We will fix it. We shall be glad to fix it that way.

Mr. KNOWLES. Yes. You asked for constructive suggestions, Senator, but apparently no suggestion now would be constructive that does not involve the support of this measure, in possibly modified language. I do not think that is a constructive suggestion.

Senator O'MAHONEY. This is the principle: That since the framers of the Constitution gave to the Congress of the United States the responsibility of regulating commerce among the States, and since no

other public agency has that power, we must bear that responsibility and we must write a contract by which corporations are to be guided in their activities. There is nothing dangerous about that principle at all. All of you have to do is to agree upon what the terms shall be.

Mr. KNOWLES. Mr. Chairman, you asked for a constructive suggestion, and I am going to make one.

Senator O'MAHONEY. All right.

Mr. KNOWLES. In making this suggestion I want you to give me credit for as much sincerity and courtesy as I give you when you ask me to make constructive suggestions.

Senator O'MAHONEY. That is right.

Mr. KNOWLES. You want me to give you credit for sincerity of purpose in framing this bill. I ask you to give me the same credit now when I say this: With all due respect to the authors of this bill, and I assure you I have nothing else, I want to say that my constructive—and I believe it is constructive—suggestion is this: You yourself have said repeatedly in these hearings that it was more than possible that this bill was not written in the proper language, and you said it just a few moments ago. This admission upon your part constitutes what I conceive to be a tacit admission of the weakness of this bill.

After the study and the thought that has been put into this by you gentlemen, without superior understanding and the materials which you said yesterday had been available to you that could not possibly be available to witnesses, then I say that before such a bill as this is presented to Congress there should be a much more detailed study of this proposition of trust-busting; a much more careful analysis by nonpartisan interests of what constitutes monopoly, what constitutes unfair trade practices; and the rules certainly laid down, as you yourself said a moment ago, so that the officers of a corporation can honestly know where they can go, what they can do, and how big they can grow before they are led to the guillotine.

That is my constructive suggestion, and I do not believe that can be accomplished in 1 year, much less in the hearings before this committee, as protracted as they have been. I think perhaps 2 years' study of this problem is necessary.

I thank you very much.

Senator O'MAHONEY. Thank you. You may have the last word.

STATEMENT OF JAMES F. RYLAND, RICHMOND, VA., REPRESENTING THE VIRGINIA MANUFACTURERS' ASSOCIATION

Mr. RYLAND. Mr. Chairman, my remarks are not going to be extensive. In fact, they are going to be quite brief.

Senator O'MAHONEY. Please give your name.

Mr. RYLAND. My name is James F. Ryland. I represent the Virginia Manufacturers' Association, and I also represent my own company, the Standard Paper Manufacturing Co. of Richmond, Va.

Senator O'MAHONEY. You may proceed.

Mr. RYLAND. I am appearing in opposition to the bill under consideration as a director and past president of the Virginia Manufacturers' Association, and also as vice president and general manager of the Standard Paper Manufacturing Co. of Richmond, Va.

The Virginia Manufacturers' Association is a voluntary organization representing 350 persons, firms, or corporations engaged in manu-

facturing businesses in the State of Virginia, and employing normally between 25,000 and 100,000 people. The members of that association run all the way from the manufacturer of fountain pens and pencils up to one company that builds some of the battleships for the United States Government.

The membership of this organization including a number of large manufacturers employing 500 or more people, and a much larger number of small manufacturers employing from 10 to 100 people each. These concerns are scattered pretty evenly throughout the State. Many of them are in the smaller towns of the State, and constitute the principal agencies of employment in their respective localities. In some instances they are the single large employer in their locality. A large majority of all the plants are at present operating less than 50 percent of capacity. Some of them are shut down completely.

My own firm, the Standard Paper Manufacturing Co., has been doing business in Richmond, Va., since 1902. We employ normally between 300 and 350 people. We are employing now 314 people. Most of those people have been with us for years. The average age is between 40 and 50 years of age. Our average employees have 15 to 20 years of employment. As general manager, there is not a single man or woman—and there are only two women—I do not know by sight, and most of them by name.

We were formerly prosperous, but since 1929 have operated at a loss each year until 1937, and in 1937 we were forced to petition the court for receivership and reorganization under section 77 (a) and 77 (b) of the Bankruptcy Act, and are still operating under receivership. Not a stockholder has received a penny in dividends since 1930, and there is no present prospect of receiving a dividend. We, only last week, had a drop in the price of our product, which will put us in the red in 1938, in spite of receivership.

Senator O'MAHONEY. Were you organized under 77 (b)?

Mr. RYLAND. We are reorganizing under 77 (b).

Senator O'MAHONEY. You know, of course, that 77 (b) is a Federal law.

Mr. RYLAND. Yes.

Senator O'MAHONEY. Could it be possible that, if corporations engaged in interstate commerce were organized under a Federal law, they might not have to appeal to the Bankruptcy Act?

Mr. RYLAND. I do not quite see that, but it is a thought I will be glad to bear in mind.

With the background given you, I would like, with the permission of the committee, to briefly state my strong opposition to the Borah-O'Mahoney licensing bill.

The act is designed to take away from the State all control over corporations with capitalization of \$100,000 or more, which produce and ship any commodity over a State line and in addition thereto, it attempts to control the structure of corporations with respect to their directory, personnel, administration, and the rights of its stockholders, the management of their operations, and the distribution of their produce. The exemption of corporations with less than \$100,000 of investment is not an exemption, because such corporations of less than \$100,000 capital can be forced to get licenses if they are found in violation of the provisions of the bill, or do any act to defeat or abridge

the purposes of the act. This would, therefore, in time draw under the provisions of the act all companies engaged in interstate business, and some of them engaged in only intrastate commerce.

The terms of this bill would degrade initiative and independent action to routine acquiescence; and curb those broad fields of research and exploration which are motivated by the expectation of profit, the only incentive to constant work and endeavor. This act would likewise destroy much of what has been left of the sovereignty of the States over a most important class of its citizens, and its largest taxpayers. The sovereignty of the State gives way under this bill, as I read it.

The Declaration of Policy (sec. 4) refers to concentration of wealth in corporate hands, and the proponents of the bill urge its enactment upon the grounds that a few large businesses require regulation from Washington, because of certain real or fancied abuses that may have existed, or which may now exist. It seems to me that if such abuses have existed, or now exist, that Congress already possesses sufficient powers to correct them, without dragging practically every interstate business under a centralized control from Washington, and by putting them in a straight-jacket, stifle that initiative which has created in this country the greatest and most efficient industrial development any country has ever seen in the whole history of the world, and which at the same time has provided the highest standard of living in the world. The encroachment of government on the rights of citizens, and the centralization of power and authority here in Washington is, without doubt, the most dangerous trend that has ever occurred in the history of this country, and the effect of it is already becoming evident in fright, distrust, and stagnated business.

If the administration of a bill of this kind were conducted by duly elected representatives of the people it would be bad enough, but if, as is here proposed, its administration is placed in the hands of dictatorial bureaus, from whose decision redress would be slow and costly, industry would be whipped down to the Russian level of daring only to do that routine thing which requires no initiative, or standing in fear of punishment and penalty, seek constantly to find methods of evasion of oppressive rules and regulations.

In respect of the argument that the bill would be instrumental in curbing the growth of large companies seeking monopolistic control in their various fields I can assert that nothing could be further from the probable result—in fact, quite the reverse would probably be true. My own company, for instance, is an industry, while not small, could certainly not be called large (our total assets being approximately \$3,000,000). In the Virginia Manufacturers Association, a large majority of the members are in the same class as my own company, namely: Not small, not large, simply moderate-sized businesses, which have grown from a small beginning through the initiative and efforts of their owners and their management in cooperation with their employees.

Senator O'MAHONEY. Of course, Mr. Ryland, you undoubtedly know, from the discussion during the testimony of your predecessor on the stand, that my conclusion is quite the reverse.

Mr. RYLAND. I understand that.

Senator O'MAHONEY. That the only possible way to protect small business like yours from the inevitable trend toward concentration in so-called private hands is to adopt the principle upon which this bill is based.

Mr. RYLAND. Senator, I feel sure and know that you are absolutely honest in your conviction. I hope you feel that way about me.

Senator O'MAHONEY. Of course, I know that.

May I say that I know perfectly well, from what has been stated by those whom we have invited here to express their disapproval of the bill, that they have fallen into what I call a bad habit of thought, because for 50 years we have been giving discretionary power to government to interfere in local management. You imagine that is the purpose of this bill?

Mr. RYLAND. I do.

Senator O'MAHONEY. It is not the purpose of the bill. Beginning with the Interstate Commerce Act in 1887, when Congress empowered the Interstate Commerce Commission to tell the railroads what they could or could not do, we have been creating one bureau after another, because, just as inevitably as a river flows down the hillside, the people of this country, regardless of what party was in power, have turned to Washington to obtain what they regarded as redress against this continued concentration. It does not make any difference whether the Republicans were elected or the Democrats were elected. We have been creating boards and commissions and commissions and boards, regardless of that. There is no doubt about that. Why? Because business has grown to such an extent that it spans the whole continent and there is no public agency except the Federal Government that is competent to deal with that power.

Mr. RYLAND. Do you not think we have been pretty prosperous in this country?

Senator O'MAHONEY. We were not so very prosperous even in 1929, were we?

Mr. RYLAND. We are not very prosperous today, either.

Senator O'MAHONEY. No; I would be the last person to deny that. The fact of the matter is that, accompanying this growth of which you talk and which we all recognize, accompanying this expansion, accompanying all the technical improvements and the like, there has been increasing unemployment.

Mr. RYLAND. When did we get that?

Senator O'MAHONEY. In 1929, before the crash, when we thought we were enjoying prosperity, there were then several million people in the United States without employment.

Mr. RYLAND. Do you not think there will always be a number of people without employment?

Senator O'MAHONEY. I suppose there will be some people always out of employment; but you have a condition where you have this increasing concentration of wealth upon the one hand, and a condition of appalling poverty upon the other hand. The Brookings Institution, for example, before this particular survey was made, before some of the remedies of the present administration were undertaken, reported that there were, as I recall, in 1929, more than 6,000,000 families in the United States that had to subsist on less than \$1,000 a year, in addition to those who were unemployed. That is our problem, and it must be met some way or other.

Mr. RYLAND. Shall I proceed?

Senator O'MAHONEY. Certainly.

Mr. RYLAND. These are the industries, gentlemen, in the United States that have placed America in the forefront of the world, and

these are the industries which will suffer most by the enactment of legislation of this kind. I can vision hundreds of cases in my own limited field of observation of small, fairly prosperous companies, doing interstate business, that in my opinion would have the choice of either passing out of existence, or voluntarily disposing of their companies to some of their larger, better equipped financed competitors. This moderately large, or little fellow, would find himself hedged about by Government regulation, dictated to, and interfered with in the management of his operations by bureaucratic chiefs and employees, who, I may say, have never had a day's experience in his business, or probably in any other business. He would find his actions cramped, his judgment questioned, his resourcefulness of no avail, and his liberty of action and his expected reward of profit gone.

I submit to you gentlemen, what incentive would there be for such a concern to continue in operation?

Better by far would it be for him to go to his large competitor and say: "You have the organization, you have the distribution, you have the materials and the capital, you are able to have at your disposal the best of legal advice. You have the time, the means, and the personnel to spend a large part of your time in Washington to protect your interests, and to see that you are not imposed upon by harsh and unreasonable restrictions. I, on the other hand, have to struggle daily to make both ends meet. I must work every day. I have no high-paid legal talent, nor have I the money to obtain it. I haven't the time to spend in Washington to ask someone else what I can do, or what I cannot do. I beg of you to take me over at the best price you can afford to pay me, and if you consider my services of value, to make me your manager on a salary that I can count on. I will then be assured of at least a modest living, and I will be freed of the responsibility and the headaches of trying to make a living under direction of those who in no way share my responsibility and care nothing for my success."

You will find, gentlemen, that this bill, in time, will foster and stimulate the growth of those very large and so-called monopolistic units, which you seem to fear, as nothing has ever done before. You cannot make or enforce a law that will compel a man to continue a method of life that is uncomfortable or distasteful to him, if there is any legal or honorable way for him to avoid it. At times I seem to sense an indifference to this bill on the part of some of our larger businesses. Is it because they sense the disappearance of some of our smaller competitors? I am pleading for the small industry.

I have talked to a number of industrialists about this bill, and at times I seem to sense an air of apparent indifference to this bill on the part of some of the large corporation people I have talked to. It has puzzled me a little. They have said, "Oh, well, we are getting everything from Washington. We might as well take this and make the best of it." I am wondering if in the minds of some of those big fellows there is not a feeling that upon the enactment of this bill they will be able to get rid of some of their small and troublesome competitors. I wish you would think about that, Senator.

Senator O'MAHONEY. I am very glad to have that suggestion.

Mr. RYLAND. That is merely a surmise on my part. I have nothing to base it upon. It may be a little imaginative.

Senator O'MAHONEY. I think it is no more imaginative than some of the other criticisms that have been made.

Mr. RYLAND. There is enough to that to lead me to think that it is already in the minds of a good many of the larger concerns, some of my own large competitors.

I will not presume to discuss other features of this bill, nor will I attempt to deal with it from a technical or legal standpoint. I am not a lawyer nor an economist. I am simply an everyday hard-working fellow that has saved what money he could and invested it back in his own business, and now it does not represent anything. If I can get something out of it I will be lucky.

I may have erred in my understanding of some of its details, but viewing the act as a whole I tell you, in all seriousness, that the effect will be to regiment industry in such a way that we can look for little advancement in the continued industrial development of this country as long as such an act is on the statute books, and there cannot be employment without continued development. You had just as well make up your minds to keep the country on relief permanently or as long as the Treasury will stand it. You may not agree with that.

Business today is in the dog house. It is regulated and attacked and interfered with, and taxed until there is no spirit to expand, and little to continue. The markets for consumer goods are contracting. The capital goods industry has almost ceased operating. Through only 2 years of operation of the undistributed profit taxes, the cash surpluses have been dissipated. I can point in my own State to more than a million dollars of expansion that would have taken place now but for the tax on undistributed profits, which would make construction work and expansion too expensive for the companies that were contemplating it. One company not very far from Washington had \$500,000, and said if they kept that money and put it into expansion of the plant it would cost them nearly \$200,000 more than to pay it to the stockholders, and they did not expand the plant.

There is no back-log or cushion. Through fear and uncertainty the financial markets are closed to industry. No one can be found to invest when the rules of the game may be changed without consent of one of the teams at any time during the game. Likewise, no businessman feels safe in assuming obligations to pay when he is uncertain of his ability to pay, because of conditions which might arise beyond his control. We do not want to borrow. I don't know anybody that wants to borrow. I don't know what is ahead of us. We are all uncertain. Businessmen are whipped down.

Go where you like, talk to the businessman on the street, on the trains, in the hotels, anywhere. I tell you he is tired. He is assuming a "what's the use" attitude. Can prosperity and reemployment return to a country under conditions of that kind?

In closing, I am going to say to you that, of course, if it is the desire of some, I do not know how many, and do not know who, but if it is the desire of some to take the profit motive out of business, I have nothing to say, except in that way lies an end to all expansion and enterprise, and we will look on America as finished, but if that be not the desire of a majority of you gentlemen of the Senate, for heaven's sake give us some respite from regulatory legislation, and let us put our people back to work at the best wages we can afford to pay them.

Senator O'MAHONEY. The committee will recess until 2 o'clock, to meet in the Judiciary Committee room in the Capitol.

(Whereupon, at 12 o'clock noon, a recess was taken until 2 p. m.)

AFTER RECESS

At the expiration of the recess the hearing was resumed, as follows:

**STATEMENT OF HON. SMITH W. BROOKHART, A FORMER SENATOR
IN CONGRESS FROM THE STATE OF IOWA**

Senator O'MAHONEY. Senator Brookhart, you may proceed. For the sake of the record, please give your name, so we may have you properly identified.

Mr. BROOKHART. My name is Smith W. Brookhart.

Senator O'MAHONEY. You were formerly a Member of the United States Senate from the State of Iowa?

Mr. BROOKHART. Yes; for about 10 years.

Senator O'MAHONEY. You are now living in Washington?

Mr. BROOKHART. I am living in a suburb of Washington at the present time. My legal residence is in Iowa and always has been.

Senator O'MAHONEY. You may proceed.

Mr. BROOKHART. Mr. Chairman, I am not representing anybody except a long study of this general economic situation in the United States. First, I want to say that we hear much in the discussion of these reform measures of dictatorship. I want to call your attention to the fact that in the United States, since we have the telegraph and telephone and radio, one township in the days of George Washington was as large as is the whole United States today. In fact, I think you could rouse the whole United States today quicker than Paul Revere could have aroused one township in his day.

In the matter of transportation, since we have the railroads, the automobiles, the trucks, the airplanes, and the hard roads, the whole United States is no larger today than the State of Virginia was in the days of George Washington. Those physical facts are so powerful that any reasonable mind will admit that governmental rule of this country must necessarily be more centralized in the National Government than it was in the days of Washington and Jefferson.

Now, in the next place, I take this bill to be a step in the reorganization of American business, somewhat upon the basis of what it actually produces, rather than upon the basis of what is anticipated in the way of speculation. And that latter point is the basis upon which, as I think I shall show you beyond controversy, it has always been organized and operated in the past.

Then, what is out of joint that needs this reorganization? Briefly, I want to point out the important things. Based on an estimate just made by the Agricultural Department, the total cash farm income of all farmers in the United States last year was about $8\frac{1}{2}$ billion dollars. That does not include what was produced and used on the farm, which would amount to a little over a billion dollars more. But it is more than the farmers contributed to the national income, which was \$68,000,000,000. In figuring the contribution or share in the National income all duplications are eliminated.

For instance, the farmers paid out money for taxes. That is Government income, and it is taken out of the national farm income. It is the same way with all income of all business of every kind. So when we simmer it down we find that agriculture contributed to the national income last year only about \$7,000,000,000. Agriculture is

still more than 25 percent of the American people actually living on and working their farms, and another large percentage is dependent upon the farmers for their living.

Senator O'MAHONEY. Senator, the figures of the Bureau of the Census indicate, as I recall, that in 1880 approximately 48 or 49 percent of the bona fide workers were classified as agricultural workers.

Mr. BROOKHART. That is right.

Senator O'MAHONEY. But in 1930 that percentage had dropped to 22.

Mr. BROOKHART. I think that is about right or rather 25 percent of the whole population. That farm income of \$7,000,000,000 practically contributed to the national income of \$68,000,000,000 is slightly over 10 percent.

Senator O'MAHONEY. Of course, at the same time the percentage of farm owners had been steadily decreasing.

Mr. BROOKHART. Very much so.

Senator O'MAHONEY. Fifty years ago more than 75 percent of the farmers operated and owned their own farms.

Mr. BROOKHART. That is right. In 1930 the Department reported that 58 percent of the value of all farm property in the United States was owned by mortgagees or absentee landlords. And in 1937, although it gives no figures, the yearbook of the Agricultural Department, says that percentage has materially increased. I expect it is over 70 today.

These farmers are not only 25 percent of the people, but they are still required to carry about 16 percent of the capital investment of the country, although their values have been reduced very much more in comparison with the value of other property.

Those figures mean that the farm income last year was scarcely more than a half of the real per capita income of the rest of the people of the country. It is only fair to say that the per capita income report shows a very devastating income for the farmer. The May 1937 bulletin of the Department of Agriculture shows that the farm income available for living was \$182.49 per capita, and the nonfarming population had an income available for living in 1936 of \$580.75 per capita. Those are figures that prove beyond question that agriculture is still far out of joint in the American economic situation, and this is one of the major causes of the depression.

Now, as for labor, we know that there are from 10 to 12 or 13 million people unemployed. We need to look no further to see that things are badly out of joint with labor.

Now, we come to capital. I noticed in the paper yesterday that Mr. Lamnot du Pont said, if the Government would leave them alone, industry would invest 25 or 30 billion dollars and employ all this labor. Let us see what they did last year. He is the greatest dominating force in the General Motors Co. He paid his president \$561,000 salary. They say most of that went back in income tax, but he had several times as much left as he had any use for. He also paid a long string of his vice presidents large salaries, accumulated a surplus of \$400,000,000, and discharged 30,000 men. That means industry at the top is overloaded with profits while farmers and labor starve and something has got to be done to reorganize this oppressive discrimination.

I want to give you a sort of balance sheet of the old deal and the New Deal. When President Harding came in and installed Mr. Mellon in charge of our economic affairs, perhaps no man in our history had such economic power as Andrew Mellon during three administrations. The national wealth, as estimated by the National Industrial Conference Board, as reliable and accurate a source as there is, was \$317,200,000,000. That was at the bottom of the lowest depression we ever had in the history of this country up to that date, 1921, which provided a favorable starting point.

Mr. Mellon then ran the economic affairs of our country for 12 years. He paid off 7 or 8 billion dollars of the national debt, and in the meantime the national wealth had been reduced to \$247,300,000,000. Therefore, it cost us in national wealth about \$70,000,000,000 to pay off 7 or 8 billion dollars under that rule of the American Government by business, when business had its say-so; when the great cry was "Less government in business and more business in Government." That was the theory on which business and Government were run, and I am giving you the result.

The New Deal came in on that \$247,000,000,000 level. Up to the 1st of January it had spent about \$18,000,000,000, a large part of which will be repaid. I have only newspaper statements of the estimates of the National Industrial Conference Board as to the present national wealth. I could not give this as authentic, but I think you can get the exact figures from the National Industrial Conference Board. According to the newspapers, it had risen to about \$366,000,000,000 at January 1, 1938, or something over \$100,000,000,000 as the result of some \$18,000,000,000 of Government spending, with that spending reduced the national wealth is again reducing. That balances up the situation as far as we have gone at this time.

I want to show you what a gigantic gamble there is in American values of all property, how unreliable they are, and how absolutely useless the business management of this country has made values in our country.

The Census Bulletin estimated the national wealth in 1912 at \$186,300,000,000. Then the National Industrial Conference Board took it up and under the same rule estimated it as follows: In 1913 at 192.5 billion; in 1914, at 192 billion; in 1915, 200.2 billion; in 1916, at 251.2 billion; in 1917, at 351.7 billion; in 1918, at 400.5 billion; in 1919, at 431 billion; in 1920, at 488.7 billion. Then in 1921 that panic came along, and it dropped to 317.2 billion. That is 171 billion drop in 1 year.

By the way, Senator, while I think of it, when 1932 came around it was time for the Government or the Census Bureau to again estimate the national wealth, and they did not do it. They cut it out, because it looked so awfully bad that they did not want it done. I think this committee ought to have the Census Bureau estimate that wealth for 1932, and then they will be ready again in 1942. It is important for you to have that information.

In 1922 the Government estimated the national wealth at 320.8 billion; and the National Industrial Conference Board took up the estimates in 1923, at 339.9 billion; in 1924, at 337.9 billion; in 1925, at 362.4 billion; in 1926, at 356.5 billion; in 1927 at 346.4 billion; in 1928, at 360.1 billion; in 1929, at 361.8 billion; in 1930 at 329.7

billion; in 1931, at 280.3 billion; in 1932 at 247.3 billion. I do not have it up to date, but on January 1, 1938, the newspapers reported it at something like 366 billion.

Senator O'MAHONEY. What was the figure for 1932?

Mr. BROOKHART. 247.3 billion.

Senator O'MAHONEY. Whose estimate was that?

Mr. BROOKHART. The National Industrial Conference Board.

Senator O'MAHONEY. What difference was there between the Census estimate and that estimate?

Mr. BROOKHART. There was none. They followed the same rule. They stood right together.

Senator O'MAHONEY. But you stated that the Census Bureau did not make an estimate in 1932.

Mr. BROOKHART. They did not. I tried hard to get that made.

Senator O'MAHONEY. When was the last comparable estimate?

Mr. BROOKHART. In 1922.

Senator O'MAHONEY. What was the Census Bureau figure in 1922?

Mr. BROOKHART. 320.8.

Senator O'MAHONEY. And the National Industrial Conference Board?

Mr. BROOKHART. The same figure.

Senator O'MAHONEY. So we may be entitled to believe that, had the Census Bureau made an estimate for 1932, it would have been 247.3 billion?

Mr. BROOKHART. I do not think it would have been any greater than that. The same rule was followed by the National Industrial Conference Board and Census Bureau. The business system that juggles values to such violent extremes certainly needs reorganizing.

Senator Howell and I, after many years of study beginning with the Declaration of Independence, figured out as nearly as possible and estimated, from that up and down movement of value, that the average rate of wealth production in this country has been slightly less than 4 percent a year at the normal level of values. That is the most important economic fact I know, when you are considering a general economic situation, and you never saw it in a newspaper and never knew it to be published anywhere. I have said it a good many times, but it never got any consideration because that condemns your high-profit corporate system.

Thus 4 percent is all there is in the American pool of production, and that is at a normal level of values. Taking the values down to 247.3-billions level in 1932, and the wealth production from the Declaration of Independence on down was less than 2 percent a year. That includes the value of all new territory we took in, Ohio, Illinois, Indiana, Michigan, Wisconsin, the Northwest Territory, the Louisiana Purchase, Florida, Texas, the Southwest Territory, all the great skyscrapers in all these cities, every dollar of unearned increment, every cent of property that has been produced, and it has amounted to less than 4 per cent per year and at the bottom of the depression less than 2 percent a year. I challenge anybody to disprove those figures. Warren and Pierson, in their book on prices, fixed the wealth increase at 4.78 percent for 65 years before the World War. That was from 1860 to the period of the World War. I think anybody can see from what has happened since that it has entirely knocked off the 78, and a good deal more, as far as that is concerned.

Since our whole wealth production is only 4 percent a year, that is all there is for dividends and for savings. If it went to all capital there would be nothing left for savings to labor or anybody else and it would only pay 4 percent of dividends.

Now, for instance, let us take last year. Suppose there was 300 billion dollars of national wealth and we produced 4 percent now, that would amount to 12 billion dollars. That was absolutely all there was in it for dividends and savings of every kind, because that was all we produced. Everything else we produced was used up in living and everybody certainly has the right to live. I will now challenge the right of a State government or any other government to set up a corporation that will be allowed to dip out of that pool of production more than is in it, more than 4 percent for instance. A corporation ought to be created by the law for the benefit of all the people and to give it the right to unlimited profits is a special privilege.

It has been said here that we could not get along without these corporations. I say if we had never had one in the history of the country, we would have been many times better off by organizing cooperatives instead of unlimited profit corporations. I have some very interesting history of the English and European cooperative systems that bear out that conclusion.

Now, in order to get an idea of this American business, we ought to have a picture of its history. I have here the most scientific picture of American business that has ever been produced. I have an extra copy or two if any of you want to see it.

Senator O'MAHONEY. This apparently was the work of Leonard P. Ayres of the Cleveland Trust Co.

Mr. BROOKHART. That is right, right out of big business. He is the most highly recognized statistician of these times. He was statistician of the United States Army during the World War, and is certainly competent in every way. He has drawn this chart through years of the most patient investigation and study in every way. I have no doubt about its accuracy. The last year I have put in with pen and ink, to bring it up to date. That corresponds quite closely to what is shown on the original chart which I just received.

Senator O'MAHONEY. What does that purport to be?

Mr. BROOKHART. American business activity since 1790. There is a column for every year of the history of the country, and 12 lines in each column, one for each month. If it was a prosperous month it is marked "plus", and the figures will show how high that prosperity went. Ten is a high prosperity and minus 10 is a low depression. If it is normal it is marked "zero." I can tell you from this chart in a half minute the condition of American business any month in the history of the country. In what month were you born Mr. Chairman? You are a young fellow.

Senator O'MAHONEY. Not so young as you might think. You will have to go back to 1884.

Mr. BROOKHART. What month?

Senator O'MAHONEY. November.

Mr. BROOKHART. November was a low-point depression.

Senator O'MAHONEY. No wonder I am trying to improve conditions.

Mr. BROOKHART. It was 10 minus at that time. You can get more accurate knowledge of American business history in half an

hour out of this chart than you can from reading economists all summer, and if you study it carefully you can get the relative proportions as you go along.

I had Colonel Ayres on the witness stand in the Banking and Currency Committee, and I presented the last 50 years of this to him and said: "Colonel, you have drawn this straight line through this chart representing the normal level of business." It was marked "normal" at the other end. I said "Can you with the naked eye tell us how much of the time we have been normal?" Well, you know, he had never thought of that, and it completely stumped him. He did not answer it at all. He is a very fine gentleman in every way and his failure to answer was not impertinent. This was before the Banking and Currency Committee of the Senate. Then I said to him: "I got out my ruler and measured along this line, I could not find 30 minutes in the whole 50 years that was normal." He said "That is about right." He pointed out how we dropped from high prosperity in a month or two to low depression, which occurred many times.

Then I went through this chart with him and picked out the major depressions. I counted all those that lasted for a year as major, and one that lasted 11 months. That was 14 deep. I want to call attention to the depth as well as the length. You will notice 25 of these major depressions in the history of this country. Then there were a lot of little ones, amounting to 20. That makes 45 depressions of all kinds that we have had in our history. Under our fine business management depressions averaged one every $3\frac{1}{4}$ years.

What do you think was the longest period of prosperity this business system has been able to give this country? If you look at 1879 you will find it, "gold resumption prosperity," lasting 4 years and 2 months. That is as long as this business system that has managed the affairs of our country up to 1932 has been able to give this country continued prosperity. It was preceded by 5 years and 10 months of depression. That was the longest one up to that time. That one is deeper than the prosperity is high. It is 13 deep. And it was followed by 2 years and 7 months of depression, which was also 13 deep, but this longest prosperity was only 12 high.

Let us go into the figures of the whole history. All you have to do is add up the pluses, the minuses, and the zeros on this table. When we added them up we found we had been prosperous or plus for 912 months, if you could call it prosperity. I call it inflation now. We had been in depressions 796 months. Up to date we have had only 68 normal months in the whole history of this country, only 68 normal months.

Well, then I took him over the gold-standard period. The gold standard was adopted absolutely in 1873 to stabilize and make certain American business. You will see, if you take 1873, that there follows 5 years and 10 months of depression. That was the longest depression up to that date. If you counted those that lasted for more than a year you would have 9 more. Then take it by months. We had plus 379 months and minus 371 months, almost even, and we had only 20 normal months since the gold standard was established.

Now, here is something about this normalcy business that I think is interesting. In 1920 we elected a president on the slogan "Back to normalcy." We all remember that. On March 4, 1921, Mr. Harding appointed Mr. Mellon as Secretary of the Treasury. They said we had the greatest secretary of the Treasury since Alexander Hamilton in charge of the economic affairs of this country, and we proceeded under this management for 12 long years. I believe he did quit a year or so before that and turned it over to Ogden Mills. How many normal months did we have? If you look at November 1924 you will find one of them. If you look down at November 1929, you will find the other one. We had 2 normal months during that 12 years of normalcy rule. There is no "if" business about what I am giving you. These are facts. This is the history of business in this country, and a scientific history by the most scientific analyst we have in the country.

So we had those 2 normal months. You will notice that we were yanked across that normal line up and down six times in those 12 years, and we were able to stop 2 months upon normal. At the end of those 12 years we were in the deepest depression in the history of the world, the most devastating depression this or any other country ever had. I am going to give you some facts to prove that. I have the report of the National Industrial Conference Board on the depression in Great Britain and in the United States.

Senator O'MAHONEY. When did this depression begin?

Mr. BROOKHART. I began October 25, 1929, and by 1932 it had reached a depth of 51. Ten is a deep depression, and that was five times deeper. We never had over 27 before.

Senator O'MAHONEY. It began at a time when corporate management was having its own way?

Mr. BROOKHART. Corporate management had been ruling this country without any restrictions in any way for 9 or 10 years at that time. I think there is no doubt that these big-business men know less about their own business than anybody in our country.

Let us see about that. I want to read something to you from President Coolidge's last message to Congress, on the 4th of December, 1928:

No Congress in the United States ever assembled, on surveying the state of the Union, has met with a more pleasing prospect than that which appears at the present time. In the domestic field there is tranquility and contentment, harmonious relations between management and wage earner, freedom from industrial strife, and the highest record of years of prosperity. The great wealth created by our enterprise and industry, and saved by our economy, has had the widest distribution among our own people, and has gone out in a steady stream to serve the charity and business of the world. The requirements of existence have passed beyond the standard of necessity into the region of luxury. Enlarging production is consumed by an increasing demand at home, and an expanding commerce abroad. The country can regard the present with satisfaction and anticipate the future with optimism.

I do not think there is any doubt but that President Coolidge believed every word he said. Yet in less than 11 months that picture was blown up by the greatest economic explosion in the history of the world. Five days after that explosion, on October 30, 1929, Mr. John D. Rockefeller, Sr., retired monarch of American finance, gave out this statement in the New York Times:

Believing that fundamental conditions of the country are sound and that there is nothing in the business situation to warrant the destruction of values that has

taken place on the exchange during the past week, my son and I have for some days been purchasing sound common stocks. We are continuing and will continue our purchases in substantial amounts at levels which we believe sound investment values.

That is what he said, and on that day Standard Oil of New Jersey was quoted at 65%, but in less than a year it was 28%. Standard Oil of California was 63% and in less than a year it was 28%. He did not know anything about his own company.

The examination of Mitchell, president of the National City Bank, showed that he did not know anything about his own bank, and tried to stop the decline of stock bought at 700 when it reached 200, and lost a fortune. It went down to 49.

Our gambling system of business is such that nobody knows anything about. It is time for somebody to set up a system we know about and through which something may be accomplished for the people of this country. It must be done by those who think and not by those who speculate.

I was impressed with the statement this forenoon by the gentleman from Richmond, Va., who said the uncertainty of things is what is holding business back. There are 147 years of uncertainty, when we did not know for any period more than 4 years and 2 months what was going on. It is that uncertainty that we want to end.

I want to compare our depression with the English depression, and show you the exact figures for comparison. I think I have them here. Anyway, I think I remember them. From 1929 to 1932 the national income of the United States, as estimated by the National Industrial Conference Board, declined 41 billion dollars. The national income of Great Britain during that period declined about 2½ billion dollars, figuring a pound at \$5, which is a little strong for that particular time. Of course, our population is 2.6 times that of Great Britain, so you divide the 41 billion by 2.6 and that gives you something over 16 billion. Our depression was 16 billion compared with 2½ billion for Great Britain, and we know England was hurt worse than we were—not exactly England, but Great Britain, by the war.

Someone said, "Well, but England did not pay her debt to us, and that made a difference." Well, take out the over 2 billion dollars of debt, and our depression is still four times as great. Take out the whole 11 billion dollars that we loaned all foreign countries and we still have a 5 billion dollar depression compared with 2½ billion in Great Britain, which proves that our business management is not as efficient or as reliable or stable as that of Great Britain.

I do not think your bill will do the whole job, but I think you have started in the right direction. We have got to reorganize American business on the basis of this 4 percent that is produced and cut out this gambling. A little bit has been done by this administration to do that, mostly in the nature of putting brakes on it, but not to any controlling extent. The farm bill helped the farmers some and they were on their feet a little, better but only a little.

Now then, farm products are the only products where the price is fixed on a speculative market. I am talking about products. Your hat, your coat, your shoes, your automobile, almost any industrial product, has the price fixed by a board of directors of the big corporations, and they are substantially able to maintain that price during the principle part of the selling season. There may be a surplus at

the end, which would cut it down, but that does not affect the great volume of sales which they control. But when the farmer comes to sell his product he starts to market, and he does not know the day before what he is going to get. It is going to depend on the guess of a bunch of gamblers in Chicago, or New York, or New Orleans on world-market conditions. It may change 50 cents a hundred on cattle in a single day. That market is controlled by the buyers of farm products and, naturally, it is manipulated against the farmer. That is the reason why farmers have not only not had 4 percent on the capital invested, but their capital has declined about half since the war. They have lost that capital.

Then a large part of labor is unemployed. We know they have nothing to live on. The W. P. A. has helped them a little, but only a little. On the other hand, the vast part of the profits of this country are in the surpluses of these great corporations, who are now trying very hard to reduce the tax on those surpluses.

So far as that is concerned, Senator McAdoo offered a farm bill that will remedy the farm situation. It estimates the percentage of all farm products consumed at home, and the percentage exported. It then fixes the price under the same rule by which industry fixes its cost and production price and only provides a 4 percent capital return while industry takes a good deal more. It charges nothing for selling expenses, because if the Government fixed the price, it would sell at that price under penalty of the law and not charge a commission to the consumers.

That bill provides that the percentage for export will be taken from each farmer and turned over to the Government upon receipts. In that way the Government collects the entire exportable surplus. It takes it off the domestic market, sells it on a foreign market, takes out all expenses, and there is no expense attached to the Treasury. Then they figure up what it amounts to net by the pound or whatever it is, and the postmaster will redeem the receipt from the farmer. The farmer just walks over to the post office and gets the money which is in the Treasury to cover it. That will put agriculture in the spiral along with other business. It never has been before. Agriculture is always left out. From 1920 to 1929 agricultural values declined 13 billion dollars, while other values increased about 57 billion dollars in that same time, showing that agriculture was not in the spiral of that Coolidge prosperity, which we now know was nothing on earth but a stock bull-market boom.

Today that speculative spiral continues for stocks and bonds. It is controlled by the sellers, but the farm market is in the control of the buyers. This opposite control of these two giant markets would upset any economic system as they have done some 25 times on a major scale. I examined Richard Whitney before the Banking and Currency Committee and challenged him to present a single honest deal in the marketing of bonds in the stock exchange. He took a \$98,000,000 German bond issue by Morgan & Co., which was distributed among five or six investment banks to sell at 90 cents on the dollar. They also hired Whitney to buy the same bonds on the stock exchange at the same time and he was instructed to not let them drop below 90. If anybody offered a bond at a fraction of a cent below 90, he gobbled it up demanded delivery and the bank that sold it did not get its commission. He testified that he had bought back over \$10,000,000 of that bond issue before it was all sold out.

As I recollect, Senator Glass piped up and said: "Well, it seems to me anybody that would work a deal like that would pick pockets." Mr. Whitney said: "No; it was a perfectly honest deal, and I will prove it." He said he maintained the price of those bonds for 18 days after they were all sold. I said "Did you tell those people you were going to maintain that price for 18 days and then drop it?" He hadn't done anything like that.

I then asked what happened the next day. Well, he did not know, and had not looked it up. I made him look it up and it dropped to 88, and then down to 86. I asked "What is it now?" He said "I do not know," but when he looked it up it was 23.

Under the Roosevelt administration those stocks and bonds advanced up to last November, according to the estimate of the Secretary of the Securities and Exchange Commission, about 67 billion dollars, but a member of the Federal Reserve Board told me that 85 billion was nearer correct some months later. That is enormous inflation, though it is still 30 billions less than in 1929.

Here is the thing that is wrong: I have never seen an economic or financial writer mention that those stocks and bonds were liabilities, so far as the public is concerned, or that the increase in the value of them is a liability, so far as the public is concerned. On the corporation balance sheet the stocks and bonds are on the liability side. If they are going to have any dividends or interest on the bonds it must be collected from the public, and the higher the value goes the more will be collected and the greater the liability upon the public.

Therefore, if the psychologists would look at it in the light of the true facts, that slump down in stocks is a good thing. If we could keep them down we would be better off. We could reorganize the railroads that are bonded for more than they are worth. They have paid 5½ billion dollars dividends on watered stock since the Esch-Cummins law. It would be better for the whole country to get rid of those liabilities, but that is not the psychology of the businessmen and newspapers.

In addition to the farm bill the wage-and-hour bill is necessary for labor. A southern Senator said to me yesterday "We cannot stand for that." I said "Suppose we put in the same bill 30-cent cotton, what would you say?" And he said "Well, we could stand for it then."

I think if you combine the farm bill and the labor bill you will settle the question of putting the farmer and laborer into that spiral. I think you have made a start in your bill, Mr. Chairman, but only a start toward stopping monopoly. Suppose you amend your bill and say that a corporation with a State charter shall not any longer have a right to operate in interstate or foreign commerce; that the Constitution gives Congress control over that field, and you will have to take out a new license or charter from the Federal Government; that we are going to tell you when we create an institution of that kind what the terms will be. You have no divine right to unlimited profits and cooperative limitations must be provided. The cooperative organizations have been sound and safe and successful wherever that system has been used in the world. I have a review of the English history of those cooperatives, if you want it.

If we would say to those great corporations: "When you take out a license or charter, we will limit the amount of your capital earnings to

the average rate of wealth production." There is no reason why the Standard Oil Co. should be allowed to dip out of this American pool more than the average percentage there is in it. There is no reason for the great corporations that control the national railroads doing that. Why should the American Telegraph & Telephone Co. be able to dip out of that pool of production and pay dividends of 9 percent even upon vastly watered capital when there is only 4 percent in the pool? Why should the International Harvester Co. be permitted to dip it out of the pool and strike down the farmers market until their capital return is reduced about half of what it should be.

I think if you would take charge of these excess profits—and take them into the Federal treasury, rather than put them back in the form of dividends, you will accomplish something. If that were in the Federal treasury you could continue your Public Works program and keep all the unemployed at work all the time.

I will admit that you could not take one company and reduce it to 4 percent and get away with it, but if they were all brought down to the same level you would have a different situation. It is just like this administration reducing the interest on Government bonds by one-half, but the bonds have kept right up to par all the time and even above par. Then you could stabilize American business and get rid of the uncertainty about which the manufacturer from Richmond testified today. Then you can repeal all these antitrust laws. You will not need them. There is no reason for objecting to the size of any corporation except on the point of efficiency if profits are controlled and the management of the corporations would figure on the size that would be the most efficient. Henry Ford has been saying the big factories ought to be broken up and scattered over the States, and he is about as competent a judge as any man.

At any rate, if your bill were amended and the McAdoo bill were passed with the wage and hour provisions, the chances are you could reorganize American business at once upon the basis of what it actually produces. That black spot on the chart is the achievement of American business and stateliness up to this date.

Senator O'MAHONEY. I notice this chart is copyrighted.

Mr. BROOKHART. Yes. The Colonel always sends me all of them I want.

If your bill were amended to control profits it would put all business on the cooperative basis and rub out that great black spot of depression. It would eliminate the waste of competition and soon double the rate of wealth production and distribute it back to the people who produce it by their hand and brain.

I ask leave to insert an article I have written covering these subjects which is in better shape than this statement.

I thank you, Mr. Chairman.

OUR ECONOMIC PROBLEM AND ITS PROGRESSIVE SOLUTION

In its January issue Common Sense says: "Specially we believe the time has come for the Progressives to go to the country with a really effective economic program." The history of American business and its present chaotic plight certainly demonstrates the soundness of this suggestion. I therefore desire to present a brief historic review together with a factual statement of present problems and suggest a constitutional but effective solution.

My review is based upon the chart of American business activity since 1790 by Col. Leonard P. Ayres of the Cleveland Trust Co. This chart is drawn upon a base line representing the normal level of business which is an average between

the peaks of prosperity and the depression bottoms. Above and below this line are parallel lines spaced 10, 20, 30, 40, and 50, ± 10 or more is a high prosperity and -10 or more is a low depression and 0 on or near the base line is normal. Less than one point either above or below the base line is in the normal zone. When business is prosperous the tracing line rises above the base, when in depression it drops below and when normal on or near the base. Below the chart is a table with a column for every year beginning with 1790 and in each column are 12 lines, one for each month. If prosperous it is marked + with a figure to indicate the height of the prosperity, if in depression it is marked - with a like figure and if normal it is marked 0. This is the most scientific chart and index of American business. In a few seconds you can tell the condition of business in any month in the history of our country by the symbol and its figure.

Here are the amazing facts shown by this chart and its table. First, there have been 25 major depressions. Twenty-four of them lasted more than a year and one which lasted 11 months was so deep, 14, that I have called it major. Then, there are 20 little ones thrown in for good measure. This means a depression of some kind every $3\frac{1}{4}$ years in all our history. We have had 912 months of prosperity, 796 months of depression and only 68 normal months under the Constitution of the United States.

It is an astounding fact that the longest period of prosperity our business system has ever given us was only 4 years and 2 months. This was in 1879 and it reached a peak of 12 for only a single month and averaged 7 $\frac{1}{2}$. It was preceded by 5 years and 10 months of depression which reached a depth of 12 for 7 months and of 13 for 3 months and averaged 8 $\frac{3}{4}$. It was followed by 2 years and 7 months of depression which again reached a depth of 12 for 4 months, of 13 for 2 months, and averaged a depth of 7 $\frac{1}{2}$.

Then let us look at normalcy—only 68 months. The longest period was only 5 months away back in 1845. In 1920 we elected a President upon the slogan "Back to normalcy." On March 4, 1921, he installed the "greatest Secretary of the Treasury since Hamilton," and he ruled our financial affairs under the banners of "Normalcy," "Less Government in business," and "More business in Government" for 12 long years. How many normal months did we have? Only two—November 1924 and November 1929. Only twice did we stop for a single month on the normal line although we were yanked across it six times up and down by "Harding normalcy," "Coolidge prosperity" and Hoover's "Bull market stock boom," ending in the deepest, darkest depression in human history.

And what about the protecting power of the gold standard? It began in 1873. There immediately followed 5 years and 10 months of depression already described and the longest up to that date. Since then there have been nine other depressions each lasting more than a year with eight little ones sandwiched in. In detail we have had 379 months of prosperity, 371 months of depression and only 20 normal months under the gold standard. I said prosperity and depression but in fact under the gold standard we have had only inflation and depression. On the chart these inflations are named "Gold resumption prosperity" which was riot of speculation; "Railroad prosperity" which was the science of watering stocks; "Recovery of 1895" which was a tiny speck in nearly 5 years of depression; "Merger prosperity" which was holding-company racketeering; "Corporate prosperity" which was interlocking directorate racketeering; "War prosperity" which was war profiteering, and finally "Coolidge prosperity" which we now know was nothing but a bull market stock boom. The end was deep dark depression, yes 51 deep and now more than 8 years long, a black spot as big as all other depressions under the gold standard combined. This is the achievement of American business and American statesmanship as heretofore organized and operated and as charted and computed by the greatest economist and statistician of big business itself.

Let us measure this achievement in figures. At the normal level of values our wealth production has been less than 4 percent per annum, with values at the bottom of the depression it was less than 2 percent per annum. These values included all the new territory we acquired since the Declaration of Independence, all unearned increment, all new construction, and all other production of every kind. At most there has only been 4 percent in the American pool of production for savings and for dividends. Most of this was taken by the giant corporations and as a result over 90 percent of American business enterprises have ultimately failed. This is the problem of little business.

What next of agriculture? It was given land at \$1.25 per acre but the railroads got 158 million acres for nothing. From this low value land advanced and that is the only prosperity the farmers ever had. They climbed out of these depressions because they had room. If they lost their farms in Virginia, like Daniel Boone, they went to Kentucky and got another, lost that and then went into

Missouri and died poor. The prices of their products have always been fixed in speculative markets controlled by the buyers. They never did get a square deal. In 1930 the Department of Agriculture shows that 58 percent of all farm land values were owned by mortgagees and absentee landlords. The 1936 year book says this percentage has increased. It is probably near 70 percent now. In 1936 the per capita income of farm people was \$182.49 available for living. The per capita income of the nonfarm population available for living was \$580.75. These facts are shown by the Departments May 1 bulletin, 1937, "The Agricultural Situation." As soon as these facts are known it is plain that the farm problem is not solved but stands at the very border line of revolution.

And what of labor? The census just taken shows that 10 or 11 million want work but are unemployed. Since the census another million or two have lost their jobs. General Motors accumulates a surplus of 400 million dollars and while its president draws a salary of \$535,000, discharges 30,000 men and this is only a sample. No more need be said to prove that the labor problem is not solved.

The President says the national income for 1937 was 68 billion dollars. There are about 29 million families. This means an income of over \$2,300 for each family upon equal distribution with $1\frac{1}{2}$ billion left over for the unmarried. More than half of these families never did get half of \$2,300. Also an analysis of this income shows that it is almost a net income. All duplications are eliminated. What farmers and laborers pay out for taxes, telephones, transportation, electricity and the like, is subtracted from their gross income and counted as the income of government and the corporations. Therefore, the total gross national income would be very much greater than 68 billion dollars, while the gross individual income of farmers is less than one-third of \$2,300, of employed laborers less than one-half and of unemployed labor relief only. Since 75 or 80 percent of our people may be classed as farmers or laborers, and since 10 or 15 percent may be classed as small business most of which ultimately fails, it is every evident that big business takes the net national income. It not only takes the income but it takes the wealth increase and even confiscates a large part of the wealth already in existence and held by others. This confiscation of the wealth of agriculture is proven beyond all doubt.

How is this confiscation brought about? I have shown that wealth production in our whole history has been at the rate of less than 4 percent per year at the normal level of values or less than 2 percent with values at the bottom of the depression. The late Senator Howell and I made an extensive study and reached this conclusion. Warren and Pierson in their book "Prices" find the wealth increase for 65 years before the World War was 4.78 percent. From what has happened since the War most anybody will admit that the .78 percent has been knocked off and more too. If the wealth increase is only 4 percent than the average possible dividend for all capital is only 4 percent. Upon this assumption capital gets all the wealth increase which it is not entitled to get. If one block of capital dips more than 4 percent out of the pool other blocks must take less or nothing or even lose their principal. This last is what has happened to agriculture and also to unemployed labor because the right to work is a property right. A country with a 68 billion dollar income and only 130 million people owes a job to every man who will work. To divert this income to the salaries and bonuses of the kings of finance and to the dividends of giant corporations is to confiscate the property rights of the farmers and the unemployed. This has been done even by our benighted Supreme Court (now getting less benighted every day) which has held a fraction over 6 percent capital return to be a confiscation of corporate property because it was so low, and that in a country that produces only 4 percent upon all capital.

To illustrate we will estimate the national wealth last year at 300 billion dollars and the new wealth production at 12 billion dollars or 4 percent. That 12 billion dollars represents all or net earnings and savings of every kind. All the rest of our income was used up in living and everybody has the right to live. For the Government, State or National, to set up a great corporation like the American Telephone and Telegraph Co. and give it the economic and legal power to earn and take a capital return of 9 percent and part of that upon a watered capital, is to confiscate the property rights of every farmer, laborer, and ordinary businessman who must pay these rates because the services are a necessity under a public franchise.

It is this corporate power exercised through speculative markets that has oppressed both farmers and laborers. Farm products are almost the only products that have their prices fixed by speculative markets and in control of the buyers. Your hat, your coat, your shoes, your automobile, your farm plow, in

fact almost any industrial product you or the farmers buy, has its price fixed by the administrative action of a board of directors of a corporation. It has no competition except other boards figuring their cost of production and profits for price base by the same formula. The price thus fixed is substantially maintained. A surplus at the end of the season may sometimes remain but that is not analogous to the farmer's exportable surplus. Its price may be reduced but that does not affect the great volume of sales already made. On the other hand the farmers exportable surplus is sold in a foreign speculative market in competition with all the world. The price is fixed by that sale, cabled back to our exchanges in a few moments and fixes the price of his whole product at substantially the same less the freight and expense of reaching the foreign market. It is the speculating buyers who control this market and the farmers have no voice in it. Naturally it is manipulated against them.

Industry, too, has its speculative market but not for its products. Its market is for securities—stocks and bonds, and it is controlled by the sellers. Its purpose is to sell these securities to the public at high prices and to enhance the value of the underlying properties and their products. It is also naturally manipulated against the farmers and the public generally. These two giant speculative markets, thus controlled, would unbalance any economic system but when both are turned against agriculture they account for the devastating discrimination against the farmers as shown by their incomes even under the New Deal. It also shows that American business is organized upon the basis of what it anticipates in speculation and not upon the basis of what it actually produces. This is an unsound basis and business can never be stabilized upon such a foundation. It has utterly failed in the past and is doomed to failure in the future. In fact after the Government had spent 16 billion dollars to get out of the depression it climbed up from a depth of 51 to within 5 points of normal on January 1, 1937, and then turned downward again to 12 points below by August, and many points still lower now. From this it would seem that we have reached a state of perpetual depression. In the past we had room to climb out, to "go West and grow up with the country," but that room is now filled. The old logic that depressions are inevitable and recoveries just as inevitable has gone forever. There can be no substantial recovery until business is reorganized upon the basis of what it actually produces, until its excess profits put the unemployed to work, and until agriculture is lifted up to the same economic level.

Let us begin this reorganization with a farm and labor bill. Senator McAdoo and Congressman Eicher have introduced such a farm bill and let it be combined with the wage-and-hour bill. Briefly, this bill directs the Secretary of Agriculture to estimate the total production of each crop as it comes toward maturity, then to estimate the percentage that will be for domestic consumption and for export to foreign countries. He has the machinery all set up and does these things now. Next he will figure a 5-year average cost of production for each farm crop for the percentage consumed in the United States by the same rules used in industry with two exceptions. He will give the farmers labor cost at a similar rate, material cost the same, tax expense the same, depreciation of plant and equipment the same, but selling expense will be omitted entirely. If the Government fixes the price and enforces it by law that sells the farm products and no selling expense should be charged the consumers. The other exception is the rate of capital return. It shall be only 4 percent or the average rate of wealth production. This is the first step for the organization of American business upon the basis of what it actually produces.

This price fixing applies only to the percentage for domestic consumption. What about the exportable percentage? Well, as each farmer brings in his crop he will be given a receipt for the export percentage. The dealer will turn this over to a Government export corporation. In this way all of the export percentage of each crop will be put in the control of the Government as a sort of a commission man for the farmers. It will be removed from the domestic market and sold in the best foreign market to be found. All expenses of storage and handling will be taken out and the postmasters directed to redeem the receipts at what is realized net and without expense to the United States Treasury. This is the only farm relief bill ever offered that does not tax the Treasury. In the North and the West the surpluses are all so small the farmers could afford to give them all to the Government and get no return if they were given the cost of production price for domestic consumption.

The cotton surpluses are larger but the Secretary says this bill would give the cotton farmers 32 cents per pound for the domestic consumption so they can certainly afford to take the world price for the balance. Altogether this bill

would increase the farm income 6 or 7 billion dollars and give them a per capita about equal to the rest of the people and the prices upon the consumers would not be as high as the scarcity program upon anything but cotton. In fact a short time ago the price of corn was \$1.40 per bushel because of acreage reduction and the draught but the farmers had little to sell and when the big crop came on it dropped to 40 cents and the farm income stayed down; \$1 per bushel on a good crop would make the farmers prosperous and that is 40 cents less than the scarcity price. As to cotton raw material it is only a small fraction of the cost of the finished product and a high price to the farmer makes little difference to the consumer. There is a half pound of cotton in a \$2 shirt and at 32 cents a pound the farmer would only get 16 cents.

Since the State governments set up corporations with the economic power to fix their own prices and the Congress allows them to operate in interstate and foreign commerce, and since they are all fixing their prices on the basis of cost of production plus a great deal more than 4 percent profit, they can make no valid objection to the Government doing the same thing for the farmers at a 4 percent profit. As for the consumers, every labor organization in the country has endorsed the cost of production principle before the committees of Congress and in their own conventions.

The last argument against the merits of such a bill is, that stable and adequate prices would cause overproduction and the whole plan would fall down of its own weight and leave the farmers worse off than ever. So far as the North and the West are concerned the big-surplus talk has always been a myth. From 1920 to 1932 we exported 20 percent of our wheat, about 10 percent of pork products, 1.3 percent of corn, 0.9 percent of oats and a positive shortage of beef products. These surpluses even the largest is less than the selling expenses of industrial products and since a fixed price would sell farm products at that price the farmers could afford to give all these exportable surpluses to the Chinese. Besides, the President said in his Omaha speech that we were 45 million acres short of enough to feed our people a class A diet and time and again he has said one-third of our people are ill fed, ill clothed, and ill housed. The Brookings Institution says we are 41 million acres short on foodstuffs. On March 16, 1934, the Agricultural Department itself through the Agricultural Adjustment Administration said we were 23 million acres short. In 1926 the National Industrial Conference Board made a complete and scientific survey of agricultural production and found that the per-capita acreage had declined from 13 in 1860 to 9 in 1920, the improved acreage since 1800, the land in crops since 1900, no increase of yield per acre since 1900, and that the per-capita production of the nine principal crops declined almost steadily since 1900 and of livestock about 30 percent since 1893. Since that report our acreage remains about the same on everything but cotton but population has increased 10 or 12 million and we have no new farm land. The report concludes: "The average farmer and his family under present conditions are working so hard, and the overhead charges for interest and taxes are so high, that stabilization or even moderate increases in prices would hardly be likely to stimulate any considerable general overexpansion of acreage or production." This was said in 1926 when the gross farm income was almost 12 billion dollars. Last year it was less than 10, benefits and all. A 6 or 7 billion dollar increase in farm income is fully warranted. The A. A. A. parity and a little half-billion benefit payments are a sell out of the farmers not down the river, but up salt river.

To this farm bill should be added labor's minimum wage and hour bill. The two bills together will create many jobs and take up half of the unemployment, but there will still remain a large army of unemployed. Industry must employ this army but will never do it with its unlimited-profit motive. Again the Government must act.

Industry is operating under corporations created by State governments with unlimited-profit charters, and Congress permits them to operate in both interstate and foreign commerce. They have no divine right to unlimited-profit charters and Congress has full constitutional power over both interstate and foreign commerce which covers 85 or 90 percent of their business. Congress should require them to take out Federal charters and should prescribe the terms of those charters. The vital provision should be a limit upon salaries and capital return. A creature of the law should be for the service of all the people and not for a special privilege. There is no reason in the world why great companies like Standard Oil, International Harvester, Telephone & Telegraph or General Motors should be set up by law and then permitted to tax the people with giant salaries and a profit greater than the rate of wealth which the people can produce. Senators Borah and O'Mahoney have a Federal incorporation bill but it should be amended to regulate

salaries and limit capital return to the average rate of wealth production. It should also take the excess profits above this return rate into the Federal Treasury. This would create a giant fund big enough to keep all other labor employed upon permanent and valuable public works. The antitrust laws can then be repealed and since this limitation of profits would end monopoly and put our whole system upon a cooperative basis. There would no longer be any motive for big business to destroy little business, no objection to mergers or divisions of business when efficiency so demanded them, and the devastating waste of competition would end. With the farmers getting a stable and remunerative price for their products, with all labor employed at adequate wages and with capital secure in a stable return and against unstable competition, there could be no overproduction and these prices and wages would distribute it in proper proportion to all our people. Under such a system thus organized we could speedily double our rate of wealth production and forever end the eternal gamble shown by Colonel Ayers' chart. Three bills now in Congress would accomplish this—the McAdoo-Eicher farm bill, the Black-Connery labor bill, and the Borah-O'Mahoney Federal incorporation bill amended as here suggested. These three bills would reorganize the American economic system upon the conservative and sound basis of what is actually produced and would save all of capitalism that is entitled to be saved, and they would do justice to all.

One question remains. Are they constitutional? They provide for fixing a minimum price for farm products, for fixing a minimum price for labor and for fixing a maximum price for capital return. They also provide for the control of the exportable surpluses of agricultural products but there can be no question as to the constitutionality of this provision. The question of price fixing in interstate or foreign commerce has been fully settled. The constitutionality of railroad rate fixing has been settled for a long time and the power extended to intrastate rates when they affected interstate commerce. The Court also sustained price fixing in the Duffey coal bill. There also remains one broad provision of the Constitution which has not yet been invoked in these cases—the power to regulate the value of money. It has never been done specifically but the power to do it is in the Constitution and very specific. The devaluation of the gold dollar affected the value of money and many other laws have done the same but they did not regulate it because the value of gold itself changes whatever may be the content of the dollar and this also affects the value of money along with the legal provisions. There is only one way to fully regulate the value of money and that is to fix the prices of commodities and services in that money. These three bills do that for such a variety of items that they amount to a quite general regulation of the value of money. The regulation of the value of money knows no State lines and is the broadest economic power given to Congress by the Constitution of the United States.

In spite of their constitutionality the financial royalists arise and say they are communism or facism. Well, the best thing among our American institutions is the public-school system. It is purely communistic up to the point where it becomes compulsory and there it may be called facism, but it is also the best Americanism we have. Our public-road system is also the purest communism except a few rugged individual toll-bridge nuisances which everybody wants eliminated. Our postal system, our public libraries, public parks, inland waterways, Panama Canal, Boulder Dam, Reconstruction Finance Corporation, and some of the alphabetical New Deal are all communistic but they are also the highest types of Americanism. Our Government is the best thing we have and he who believes in it doing things for the people and by the people is a better American than any red baiter that lives.

SMITH W. BROOKHART.

STATEMENT OF CHARLES BECK, FREDERICKSBURG, VA.

Senator O'MAHONEY. For the sake of the record, please state your name.

Mr. BECK. My name is Charles E. Beck, Fredericksburg, Va.

Senator O'MAHONEY. What is your business?

Mr. BECK. I am a baker, manager and part owner of three bakeries located at Waynesboro, Newport News, and Fredericksburg, Va. I have been in the baking business all my life. I have recently been confronted with unfair-trade practices on the part of large baking

combinations engaged in interstate commerce which threaten my existence. I am without remedy in existing law.

Senator O'MAHONEY. Is your company a corporation?

Mr. BECK. Yes.

Senator O'MAHONEY. What is the name of it?

Mr. BECK. City Bakery, Inc., of Fredericksburg.

Senator O'MAHONEY. A Virginia corporation?

Mr. BECK. Yes. Do you want the other two?

Senator O'MAHONEY. Yes.

Mr. BECK. Virginia Valley Bakery, Inc., at Waynesboro, and Virginia City Bakery at Newport News.

Senator O'MAHONEY. You may proceed.

Mr. BECK. Two large corporations with subsidiaries in New York are selling bread at almost 3 cents a loaf above the price the same corporations are selling bread in the State of Virginia, and if these two large corporations are not losing money in Virginia their profits should show much more than they did.

Senator O'MAHONEY. You say they are selling bread in New York at 3 cents a loaf higher than they sell it in Virginia?

Mr. BECK. Yes.

Senator O'MAHONEY. In other words, they are competing with you in Virginia.

Mr. BECK. Yes; practically the entire State of Virginia.

Senator O'MAHONEY. Is that low price being offered only in your territory?

Mr. BECK. In other States, I understand.

Senator O'MAHONEY. So far as your experience goes?

Mr. BECK. Yes.

Senator O'MAHONEY. In your territory it is in direct competition with you?

Mr. BECK. Yes; and Richmond, Va.

Senator O'MAHONEY. There is a different price for bread where your competition exists from that which they charge where there is no competition?

Mr. BECK. That is right.

Senator O'MAHONEY. Is there any difference in the weight of the loaf?

Mr. BECK. Yes. There was about 6 ounces difference. Later they cut it to 4 ounces.

Senator O'MAHONEY. Just make that clear, if you please.

Mr. BECK. At first, about 6 months ago, they were giving 22 ounces for 8 cents wholesale.

Senator O'MAHONEY. A 22-ounce loaf was sold at wholesale for 8 cents?

Mr. BECK. Yes.

Senator O'MAHONEY. All right.

Mr. BECK. And in Washington it is 16 ounces for 8 cents.

Senator O'MAHONEY. They are selling 16 ounces in Washington for 8 cents?

Mr. BECK. Yes.

Senator O'MAHONEY. Is that the same corporation?

Mr. BECK. The same corporation.

Senator O'MAHONEY. That is a corporation operating in interstate commerce, which sells for 8 cents in Virginia a loaf of bread weighing 22 ounces?

Mr. BECK. It is 20 now.

Senator O'MAHONEY. It was selling 22 ounces in Virginia, and in Washington it was selling for 8 cents a loaf that was 6 ounces lighter?

Mr. BECK. Yes.

Senator O'MAHONEY. And now you say, instead of 22 ounces, they are selling in Virginia a 20-ounce loaf?

Mr. BECK. Yes.

Senator O'MAHONEY. What is the explanation of that change, or do you know?

Mr. BECK. We tried to get the matter straightened through the Federal Trade Commission.

Senator O'MAHONEY. What is the weight of the loaf being sold in Washington?

Mr. BECK. Sixteen ounces.

Senator O'MAHONEY. The difference between Virginia bread and Washington bread sold by the same corporation was 4 ounces?

Mr. BECK. Yes.

Senator O'MAHONEY. And the price is the same?

Mr. BECK. Yes.

Senator O'MAHONEY. All right. Proceed.

Mr. BECK. These unfair-trade practices are continually adding to the unemployment list as well as the reduction in wages. There is not a bakery in Virginia that is not losing money in the territory where these big corporations strike. The independent bakers in Virginia, with about 2,000 employees, will be crushed if something is not done. I am informed that this same practice is being carried out throughout other States in the Union.

Senator O'MAHONEY. What do you sell your bread for?

Mr. BECK. We were selling it at 16 until recently.

Senator O'MAHONEY. Sixteen ounces?

Mr. BECK. Yes.

Senator O'MAHONEY. For 8 cents?

Mr. BECK. Yes.

Senator O'MAHONEY. You were selling in Virginia a 16-ounce loaf of bread for 8 cents, the same as the price of this bakery combination?

Mr. BECK. Yes.

Senator O'MAHONEY. But when the bakery combination moved into your territory, instead of selling the same loaf it was selling in Washington, it increased the weight of the loaf?

Mr. BECK. Yes.

Senator O'MAHONEY. All right.

Mr. BECK. I just returned from Florida where I found that one of the largest grocery chain outfits are getting 2 cents more for their bread throughout the South than they are in Virginia, and are paying lower wages.

Senator O'MAHONEY. That is a grocery chain operating in interstate commerce?

Mr. BECK. Yes; they bake their own bread.

Senator O'MAHONEY. Where do they bake it?

Mr. BECK. Throughout the entire country.

Senator O'MAHONEY. What do they sell the bread for in the South?

Mr. BECK. Eight cents a pound. They sell their own product in their own stores. There is no wholesale price.

Senator O'MAHONEY. No wholesale price?

Mr. BECK. They sell direct to the consumer.

Senator O'MAHONEY. The consumer who is served by that chain store is receiving less for his money, then?

Mr. BECK. They get a pound loaf for 8 cents down south. The same people are charging 6 cents a pound in our territory, 2 cents less.

Senator O'MAHONEY. Two cents less than they charge where they do not have competition?

Mr. BECK. Yes; and a lower wage scale. A large grocery chain with a bakery in Washington is selling their product manufactured in Washington at 2 cents less in Virginia than they are getting for their product in Washington.

Senator O'MAHONEY. Two cents less than they are selling it for in Washington?

Mr. BECK. Yes.

Senator O'MAHONEY. They take the same product which they are selling to consumers in Washington at a given price, and after delivering it to Virginia they sell it for 2 cents less?

Mr. BECK. Yes. If large industries are allowed to carry on their unfair practices, incorporated in States with generous corporation laws, where they organize powerful holding companies, and have their first-class accounting systems, they can tell early in the year whether their profits are running large. They pick districts or States where they are weak and undersell, disorganize, disrupt and play havoc in the States or districts, which gradually causes increased unemployment, and if a careful survey is made it is my belief that the Government is actually losing 100 million dollars additional revenue.

Senator O'MAHONEY. Do you know of any industries which have been stifled or closed out?

Mr. BECK. Yes; in two States.

Senator O'MAHONEY. All right.

Mr. BECK. Why did Judge Soper in the district court of Baltimore enjoin the General Baking Co. from exercising direct or indirect control of all or any part of the capital stock of the Continental Baking Co.? The Government, on the basis of the testimony submitted, rightfully feared the destruction of all affected independent bakeries by the proposed combine. Today the rapid growth of these two corporations has resulted in each being almost as large as both were in 1926.

I am informed that the same monopolistic methods were pursued in the State of Oregon and the State of Washington, with the eventual result that practically every independent baker was in financial straits. A State law was then passed prescribing fair business practices, with the result that today the public is getting a fair-sized loaf of quality bread, and the bakers are all making money.

It is my opinion that this bill is capable of doing as much for the people and the corporations of the United States as the State legislation to which I have just referred. Unemployment resulting from unfair trade practices which stifles little business and restrains individual enterprises is the prime cause of the terrible recession from which America suffers today. I would like to ask why does Virginia, as well as some other States, have a milk control board to regulate the prices of milk, unless it was because the monopolies were gradually breaking down the dairy farmers?

Senator O'MAHONEY. Have you made any representations to the Federal Trade Commission about these particular practices to which you refer?

Mr. BECK. Yes.

Senator O'MAHONEY. Does that complete your statement?

Mr. BECK. Yes.

Senator O'MAHONEY. Thank you very much.

I am going to insert in the record a letter which I received, dated January 4, 1938, from Mr. Joseph A. Hill, chief statistician of the Division of Statistical Research, Bureau of the Census.

This letter shows that the total number of establishments, both corporate and individual, operating in the United States since 1904 was 216,108. Of that number 51,097 or 23 percent were under corporate ownership or control. In 1929, 25 years later, the total number of establishments had decreased to 210,959, of which 101,815 were under corporate ownership or control; that is to say, 48.3 percent. In other words, the proportion of corporate control increased from 23.6 percent in 1904 to 48.3 percent in 1929, while the total number of establishments decreased by something more than 5,000.

In the same period the number of wage earners in all the establishments increased from 5,468,000 to 8,838,000, while the number of wage earners of the establishments under corporate ownership or control increased from 3,862,000 to 7,945,000. In other words, in 1904, 70.6 percent of all employees or all wage earners in manufacturing establishments were employed by corporations. In 1929 that proportion had arisen to 89.9 percent.

The value of the products of all manufacturing establishments amounted to \$14,794,000,000 in 1904, and to \$70,435,000,000 in 1929. In 1904, of that total of \$14,794,000,000, \$10,904,000,000 or 73.3 percent were produced by corporations. In 1929 the corporations produced \$64,901,000,000 of the total \$70,435,000,000, or 92.1 percent. This shows the steady drift toward corporate control of the entire manufacturing industry of the United States, and shows also the steady concentration of manufacturing industries in corporate hands and the gradual reduction of the number of separate establishments.

(The document referred to is here set forth in full, as follows:)

JANUARY 5, 1938.

Hon. JOSEPH C. O'MAHONEY,
*United States Senate,
Washington, D. C.*

My DEAR SENATOR. I believe that the enclosed material will supply at least in part the kind of information you desire as indicated by your recent telephone call.

The movement of population from rural to urban areas is indicated by the table on page 2 of the enclosed article on "Growth of Urban Population in the United States of America." In the period of 50 years from 1880 to 1930 the population living in cities of over 100,000 increased from 12.4 percent of the total population of the United States to 29.6 percent, and the population living in cities of 25,000 and over in the same period increased from 17.2 percent of the total to 40.1 percent, while the rural population declined from 71.4 percent to 43.8 percent.

The table and diagram on page 6 show the striking change that has taken place in recent years in the occupational distribution of gainful workers. The figures are derived mainly from the occupation statistics of the census of population. The percentage of gainful workers engaged in agricultural pursuits decreased from 29.4 percent in 1880 to 22.0 in 1930, while the percentage in manufacturing and construction increased from 25.6 to 30.9. Still more striking is the increase in the percentage shown from transportation and trade, from 12.2 to

28.6. Under separate cover I am sending you a copy of Occupation Statistics—United States Summary. This will show you, if you are interested, what occupations are included under each of the four divisions of table 2.

The growth or development of corporate ownership or control in the manufacturing industries is indicated by the enclosed typewritten table. This covers a period of 25 years, from 1904 to 1929, comparable figures not being available for the years prior to 1904. I am unable to supply any similar figures for other divisions of industry or for all industries combined. But I enclose as a matter of interest a typewritten table showing for 1 year only (1929) the extent to which retail and wholesale distribution is under the ownership or control of corporations. No comparative figures are available for earlier years as the 1929 census of distribution taken in 1930 was the first census of the kind ever taken.

Trusting that the statistics herewith supplied will be of use for your purpose, I am

Very truly yours,

JOSEPH A. HILL,

Chief Statistician, Division of Statistical Research.

CENSUS OF MANUFACTURES: PROPORTION OF THE TOTAL NUMBER OF ESTABLISHMENTS, TOTAL NUMBER OF WAGE EARNERS, AND TOTAL VALUE OF PRODUCTS REPORTED FOR ESTABLISHMENTS UNDER CORPORATE OWNERSHIP OR CONTROL

The table shows that in 1929 the establishments under corporate ownership or control constituted 48.3 percent of the total number of establishments in manufacturing industries, employed 89.9 percent of the total number of wage earners, and produced 92.1 percent of the total value of products. The corresponding percentages in 1904 were respectively 23.6, 70.6, and 73.7.

	Total	Under corporate ownership or control	
		Number or value	Percent
Number of establishments:			
1929.....	210,959	101,815	48.3
1919.....	290,105	91,517	31.5
1914.....	275,791	78,152	28.3
1909.....	268,491	69,501	25.9
1904.....	216,180	51,097	23.6
Number of wage earners (average for the year):			
1929.....	8,838,743	7,945,478	89.9
1919.....	9,096,372	7,875,132	86.6
1914.....	7,034,247	5,649,891	80.3
1909.....	6,815,046	5,002,393	75.0
1904.....	5,468,383	3,862,698	70.6
Value of products:			
1929.....	\$70,435,000,000	\$64,901,000,000	92.1
1919.....	\$62,418,000,000	\$54,744,000,000	87.7
1914.....	\$24,246,000,000	\$20,183,000,000	83.2
1909.....	\$20,672,000,000	\$16,341,000,000	79.0
1904.....	\$14,794,000,000	\$10,904,000,000	73.7

Census of Distribution, 1929—Proportion of total number of stores or establishments, total employees, total pay roll (salaries and wages), and total net sales reported for establishments under corporate ownership or control

	Total	Under corporate ownership or control	
		Number	Percent
Retail distribution:			
Number of stores.....	1,543,158	243,344	15.8
Number of employees.....	3,833,581	2,103,000	54.9
Total pay roll.....	\$5,189,669,960	\$3,090,502,773	59.6
Net sales.....	\$49,114,653,269	\$23,689,439,809	48.2
Wholesale distribution:			
Number of establishments.....	169,702	89,266	52.6
Number of employees.....	1,605,042	1,286,848	80.2
Salaries and wages.....	\$33,010,129,535	\$2,574,355,694	85.5
Net sales.....	\$69,291,547,604	\$51,416,049,811	74.2

Senator O'MAHONEY. The hearings are closed.

(Whereupon, at 3:30 p. m., on Thursday, Mar. 24, 1925, the hearings were closed.)

SUPPLEMENTARY REMARKS OF CATHARINE CURTIS, NATIONAL DIRECTOR, WOMEN INVESTORS IN AMERICA, INC., NEW YORK CITY, N. Y.

In accordance with the privilege extended me by Senator O'Mahoney on the occasion of my appearance before the Senate Judiciary subcommittee on March 22, I herewith submit, for the information and guidance of the committee, additional data in relation to the question of Federal licensing of industry.

In my remarks before this committee on the above date, I said, in speaking for the organization which I represent, "We urge you to name a capable nonpartisan fact-finding committee to study these various laws and their effect upon our industrial and economic life in order to determine what ones (acts of Congress) are retarding the economic machinery, then repeal them" (p. 776, typewritten transcript of the hearings).

I wish to point out that, in the course of the hearings conducted by this committee since January of 1937, certain studies of alleged "bigness" have been referred to repeatedly as authoritative proof of that "bigness" and the need for its control by the Federal Government.

We believe, from an examination of these cited authorities, that they have been given too ready an acceptance without proper study and analysis. We are convinced that they contain certain statistical and other vagaries, some of which we herewith set forth, which raise considerable doubt as to their reliability, and possibly establish that they no longer can be accepted as completely factual and authoritative and therefore should not be considered as establishing proof of either bigness or monopoly.

We further contend that, in view of this, for the Congress now to take any action along the lines contemplated in this proposed legislation without proper impartial research and study on its part, would be to perpetrate a gross injustice on the investors of the Nation.

In my remarks before the committee I referred to certain statements made to the committee on March 10 by Mr. Willis J. Ballinger when he appeared as a witness favoring such action as this measure contemplates. I wish now to call your attention to two additional statements of this witness:

1. "Five percent of retail establishments do 45 percent of retail business" (p. 297, typewritten transcript of the hearings).

We believe this statement to be entirely misleading, in the light of additional facts, as an index of monopoly. According to figures of the United States Department of Commerce, this 5 percent quoted by Mr. Ballinger represents more than 77,000 stores. We cannot accept that business in the hands of 77,000 concerns is a monopoly.

2. "In meat packing, two companies have 50 percent of United States production" (p. 229, typewritten transcript of the hearings).

We contend that the above statement cannot be considered as even technically correct. Official data prepared for the proposed N. R. A. meat-packing codes reveals that it took the handlings of all the big packing companies to encompass 50 percent of the total slaughter.

This witness follows the procedure of other witnesses in seeking to support his claim of commercial bigness by citing the book *The Modern Corporation and Private Property*, written by A. A. Berle, Jr., and Gardiner Means and published in 1932.

Wherever the cry of monopoly is raised today, one usually hears this book cited as authoritative proof of alleged monopoly. After a study of it, and other available accepted data, we cannot accept it as authoritative, nor do we believe the committee should so consider it.

The most widely cited quotation from this book is that "49 percent of all corporate wealth is controlled by the 200 largest corporations."

A study of the statistics advanced by the authors in support of this statement reveals that—

1. It is based upon the gross assets of these companies which is rather misleading and involves a tremendous amount of duplication. Apparently deriving their figures from income-tax reports, the authors failed to avoid the double counting of gross assets listed in the returns of the companies selected, together with those of subsidiary companies. Squeezing out of these watered figures by eliminating this duplication would reduce the quoted figures considerably.

2. Prof. W. L. Crum, of Harvard University, in discussing this book in an article in the American Economic Review for March 1934 (pp. 70 to 77), further points out that the authors, in selecting the alleged 200 largest corporations, did not consider only commercial corporations. They included railroads and other public utilities, all of which have been under extreme Federal and other public regulation for many years. Professor Crum states that, if these noncommercial corporations are removed from the list quoted by the authors, it reduces this alleged control of corporate wealth from 49 to 30 percent.

Hence the statement of the authors as to 200 corporations controlling 49 percent of corporate wealth cannot be accepted as applying to commercial corporations, which this bill seeks to control. We believe that if the "water" of duplicated assets and of noncommercial corporations was squeezed out of these figures, it would reduce them to about 15 percent, or a figure comparable to that now admitted as representing Government owned or controlled operations in the utilities field.

In addition, no consideration is given to the fact that millions of stockholders own the assets of these corporations.

These authors, as cited by various witnesses, also contend that the "big corporations" have grown more rapidly than the medium-sized ones.

Again we contend that more widely accepted statistics prove to the contrary.

An examination of the data used by the authors to support this contention reveals—

1. In computing "gross assets" of large corporations, they used valuations of a period when, as everyone knows, prices of all stocks and bonds were in the process of great inflation.

2. In "estimating" the "gross assets" of medium-sized corporations, they use their own specially designed system, which considers neither values during an inflated period nor securities held by the medium-sized corporations in other companies.

In other words, it seems apparent that they underestimate the growth of the medium-sized and compare this result with their overestimate of the "giants."

In considering the income of the alleged "giants," these authors again employ methods we do not believe should be accepted as factual or authoritative:

1. Basing the income estimates upon the decade of the twenties, they do not use the same list of "giants" throughout the entire period. There is always a mortality among the large corporations as well as among others.

2. Large corporations do not always continue to go "up hill" in income. The records show that many went "down hill."

Inspection of this work shows the authors weeded out those companies with declining incomes during the period, substituting in their place companies whose incomes were rising. We believe this tends to develop a distorted and nonfactual picture and the conclusion reached by such methods should not be accepted as authoritative.

Another "authority" cited by proponents of this legislation is *How Profitable Is Big Business?* published in 1937 by the Twentieth Century Fund. This publication also refers to the Berle-Means book, and is advanced by proponents as proof of the reliability of the latter publication.

A careful study of this Twentieth Century Fund publication reveals that it also fails to consider this vitally important fact, to wit, that the rate of mortality among the large concerns has been greater than that of the rank and file. This fact which both Berle and Means and the Twentieth Century Fund disregarded is based upon statistics relative to business provided by Dun & Bradstreet, and we believe establishes the unreliability of the Berle-Means statement that industrial concentration is increasing and on the way to gobbling up all industry.

Reference has been repeatedly made by proponents of this bill to the fact that banking is under Federal control, and that many of the fears now being raised by opponents of this legislation were raised 74 years ago by opponents of Federal control of banking.

I wish to reiterate my statement made before the committee, to wit, that Federal control of banking has aided, not retarded, monopoly in that field. In addition to the reference to Mr. Ballinger's statement previously made by me (p. 769, typewritten transcript of the hearings), I call attention to the testimony of Mr. John P. Frey of the American Federation of Labor before another subcommittee of the Senate Judiciary Committee on January 27 and again on January 31, 1933, during hearings on the wages-and-hours bill. I refer to his remarks as recorded in the printed record of those hearings on pages 439 to 452 as additional proof that Federal control in the banking field has aided, not retarded, monopoly.

As additional proof of this contention, I also refer the committee to another publication of the Twentieth Century Fund, to wit, *Big Business, Its Growth, and Its Place*, also published in 1937—but preceding the one now cited by proponents of this measure as sustaining the Berle-Means book. Attention is called to the following paragraphs from this publication:

"During the next 11 years, 1921-31, inclusive, there were 5,094 bank mergers involving 9,538 banks. As a result, 5,137 institutions ceased to exist. But instead of an increase in the number of new small banks to offset this tendency toward concentration—as during the first two decades of the century—8,036 banks were permanently closed subsequent to failure and only about 3,000 new ones were established. This net decline of more than 5,000, plus the decrease of 5,094 banks through merger and consolidation, accounts for about 10,000 of the decrease of approximately 10,500 banks between early 1921 and the end of 1931" (p. 86).

"In number they remained insignificant, but their share of the total assets of all national banks rose from slightly more than one-fourth to not much less than one-half" (p. 89).

I believe that after considering all these facts it must be admitted the fears of former legislators, cited by Senator O'Mahoney on page 743 of the typewritten transcript of these hearings, were well-founded. Indeed, there are many who will admit that the New England hillsides have lost their farms as the Senator from Vermont prophesied, and if Representative Brooks were alive today, he undoubtedly would see evidence of the banking concentration he feared would be produced by the National Bank Act of 1864.

I do not deem it necessary to review present-day legislation that has added to this concentration of Federal control during the past few years. I believe that members of this committee are only too familiar with it. Suffice it to say that Government records reveal the sharpest decrease in the number of banks in our history occurred during the year 1933.

In speaking of estimated national wealth, ex-Senator Smith W. Brookhart said: "By the way, Senator, while I think of it, when 1932 came around, it was time for the Government or the Census Bureau to again estimate the national wealth, and they did not do it. They cut it out, because it looked so awfully bad that they did not want it done" (pp. 828-29, typewritten transcript of the hearings).

We wish to call attention to reports of the Bureau of the Census, United States Department of Commerce, beginning with the report for the year 1933 and for ensuing years. Examination of those reports reveals:

1. The census of national wealth for the year 1932, was started early in that year.

2. Work on that particular census was dropped late in 1933.

He further stated, "I think this committee ought to have the Census Bureau estimate that wealth for 1932, and then they will be ready again in 1942. It is important for you to have that information" (p. 829, id.).

We are in complete accord with his recommendation, that the 1932 census should be completed.

However, his statement as to the dropping of this work "because it looked so awfully bad they did not want it done," causes deep concern. May this be taken as proof of a newly instituted and heretofore unrevealed Government practice—the deliberate suppression of statistical data and information by the Government because it looks "so awfully bad?"

It would seem that the statement of this witness should arouse great interest in the minds of the entire Senate and result in an immediate investigation to determine whether this and other suppressions of fact actually is being carried out.

In closing our remarks, I wish again to refer to Senator Brookhart's testimony by calling particular attention to the chart of Col. Leonard P. Ayres which he submitted for the information of the committee.

Senator Brookhart called attention to the fact the greatest and most prolonged depression ever experienced by this country, is graphically set forth on the Colonel Ayres chart covering the years 1930-37.

We offer this portion of Colonel Ayres' chart as conclusive evidence that the prolongation of this depression encompasses the years during which there has been more Government legislation passed which has provided for more investigation, intimation, regulation, and control of and more competition with industry by Government than at any other period during our entire history.

All of this, we contend, has acted as brakes upon the normal functioning of our capitalistic system—the repression of the normal laws of that system and the resultant extension of the depressed period as noted in the chart.

History establishes that new industries have led us out of past depressions.

How can new industries be developed if businessmen are forced to give more and more of their time in defending their activities against Government attack—in settling disputes—in analyzing recently passed or newly considered legislation relating to them—and in paying more and more taxes to Government for use in its steadily increasing nonproductive activities?

Three important facts are essential in promoting industrial development. They are (1) inventive genius, (2) mechanical ability, and (3) surplus capital.

As yet, no legislative means has been discovered to abolish the first and second of these. But we do feel that the third is being seriously affected by present-day legislative and governmental activities.

Neither inventive genius nor mechanical ability can, of themselves, bring a new industry into life without the assistance of surplus capital. That surplus capital is the result of the savings of the people and the "excess profits" of industry.

We believe this committee is familiar with laws recently passed that limit the possibility of creating new industries from the "excess profits" of industry.

In addition to all this, how can new industries obtain finance if the investors of the country continue their unwillingness to invest their savings in new enterprise because of fear and realization of the existing chaotic situation?

Remove the brakes from our capitalistic system and it will once more function efficiently for our people as it has in the past. To do this, we again recommend:

Investigate the acts of Congress and Government to uncover those brakes—then remove them.

APPENDIX

FEDERAL TRADE COMMISSION,
Washington, April 14, 1938.

Mr. DONALD MORGAN,
*Clerk, Senate Judiciary Committee,
United States Capitol, Washington, D. C.*

DEAR MR. MORGAN: Attached are the charts requested by Senator Warren G. Austin of all corporations in the United States with assets of \$50,000,000 or more taken from Poor's and Moody's, industrials, railroads, public utilities, and fiscal corporations, 1937.

I note in the remarks of Senator Austin, when I was before the committee, that he requested the names of all corporations with assets or capitalization of \$50,000,000 or more. I stated in my remarks that corporations with assets of \$50,000,000 or more were regarded by Burley and Means as small corporations, as corporations go in the United States. I assumed, therefore, that a report on all corporations with assets, as distinguished from capitalization, of \$50,000,000 or more will be satisfactory to the Senator.

Sincerely yours,

WILLIS J. BALLINGER,
Economic Adviser to the Commission.

Domestic financial corporations with total assets of \$50,000,000 and over

[Poor's fiscal volume, 1937]

Name of corporation	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
City National Bank & Trust Co. of Chicago.....	\$136,070,440	Banking and trust.	Illinois.....	Oct. 5, 1932	Chicago, Ill.....	Yes.....	
Corn Exchange Bank Trust Co.....	360,261,824	do.....	New York.....	(Dec. 6, 1852 May 12, 1929	New York, N. Y.....	do.....	
United States Trust Co. of New York.....	110,114,765	do.....	do.....	Apr. 12, 1853		No.....	
The Commercial National Bank & Trust Co. of New York.....	116,078,515	do.....	do.....	Nov. 2, 1928	do.....	do.....	
Central Penn National Bank of Philadelphia.....	70,830,925	do.....	Philadelphia.....	(1865. July 12, 1930	Philadelphia, Pa.....	do.....	
The Equitable Trust Co. of New York.....	57,009,291	do.....	New York.....	June 2, 1930		do.....	
The Farmers & Merchants National Bank.....	136,528,617	do.....	California.....	Feb. 7, 1903	Los Angeles, Calif.....	do.....	
Girard Trust Co.....	139,216,205	do.....	Pennsylvania.....	Mar. 17, 1836	Philadelphia, Pa.....	Yes.....	
Corn Exchange National Bank & Trust Co.....	128,317,978	do.....	do.....	Aug. 28, 1858	do.....	No.....	
Crocker First National Bank of San Francisco.....	148,575,498	do.....	California.....	Aug. 23, 1907	San Francisco, Calif.....	do.....	
The First National Bank of Denver.....	68,674,531	do.....	Colorado.....	May 10, 1865	Denver, Colo.....	do.....	
The Bank of California (national association).....	139,854,380	do.....	California.....	June —, 1864	San Francisco, Calif.....	do.....	
Wachovia Bank & Trust Co.....	86,430,647	do.....	North Carolina.....	Feb. 16, 1893	Winston-Salem, N. C.....	do.....	
First & Merchants National Bank of Richmond.....	81,908,050	do.....	Virginia.....	(Apr. 24, 1865 Feb. 27, 1926	Richmond, Va.....	Yes.....	
Provident Trust Co. of Philadelphia.....	66,987,856	do.....	Pennsylvania.....	Feb. 14, 1922		do.....	
Mercantile-Commerce Bank & Trust Co.....	176,813,594	do.....	Missouri.....	May 18, 1929	St. Louis, Mo.....	No.....	
Harris Trust & Savings Bank.....	239,993,459	do.....	Illinois.....	Feb. 4, 1907	Chicago, Ill.....	do.....	
First Trust & Deposit Co.....	63,217,841	do.....	New York.....	Jan. 1, 1919	Syracuse, N. Y.....	do.....	
The First National Bank of Atlanta.....	113,534,135	do.....	Georgia.....	Nov. 25, 1929	Atlanta, Ga.....	do.....	
The Indiana National Bank of Indianapolis.....	117,980,435	do.....	Indiana.....	1865.....	Indianapolis, Ind.....	do.....	
First National Bank in Houston.....	57,608,907	do.....	Texas.....	(1866. May 3, 1933	Houston, Tex.....	do.....	
First Security Corporation of Ogden.....	67,118,777	do.....	Delaware.....	June 15, 1928		Yes.....	
The Central Trust Co.....	78,337,319	do.....	Ohio.....	Jan. 31, 1927	Cincinnati, Ohio.....	No.....	
The First National Bank of Boston.....	756,201,927	do.....	Massachusetts.....	1864.....	Boston, Mass.....	do.....	
The Omaha National Bank.....	50,516,216	do.....	Nebraska.....	July —, 1860	Omaha, Nebr.....	do.....	
The First National Bank of Birmingham.....	70,153,308	do.....	Alabama.....	Apr. 25, 1884	Birmingham, Ala.....	1 affiliate.....	
The First National Bank of St. Louis.....	248,924,944	do.....	Missouri.....	July 7, 1919	St. Louis, Mo.....	No.....	
The Northern Trust Co.....	355,701,208	do.....	Illinois.....	Aug. —, 1889	Chicago, Ill.....	1 affiliate.....	
First National Bank of Philadelphia.....	106,649,487	do.....	Pennsylvania.....	June 20, 1863	Philadelphia, Pa.....	No.....	
The Citizens & Southern National Bank.....	97,105,881	do.....	Georgia.....	1887.....	Savannah, Ga.....	Yes.....	
The First National Bank.....	138,028,603	do.....	Missouri.....	Mar. 1, 1886	Kansas City, Mo.....	No.....	
The Manufacturers National Bank of Detroit.....	142,075,231	do.....	Michigan.....	July 28, 1933	Detroit, Mich.....	do.....	
The First National Bank.....	81,706,479	do.....	Pennsylvania.....	May 30, 1863	Scranton, Pa.....	do.....	

Central Hanover Bank & Trust Co.	979,309,438	do	New York	June 18, 1918	New York, N. Y.	Yes
The Fifth Avenue Bank of New York	58,243,270	do	do	Oct. 11, 1875	do	do
Security Trust Co. of Rochester	134,377,707	do	do	1892	Rochester, N. Y.	No
The First National Bank of the City of New York	648,018,818	do	do	Mar. —, 1863	New York, N. Y.	do
Bank of New York & Trust Co.	207,669,730	do	do	Sept. 21, 1922	do	Yes
The National Bank of Commerce in New Orleans	32,322,083	do	Louisiana	May 22, 1933	New Orleans, La.	No
Guaranty Trust Co. of New York	2,088,978,870	do	New York	Jan. 27, 1910	New York, N. Y.	Yes
Commonwealth-Commercial State Bank	66,051,749	do	Michigan	June 27, 1927	Detroit, Mich.	No
The Chase National Bank of the City of New York	2,562,182,071	do	New York	May —, 1930	New York, N. Y.	Yes
First National Bank of Jersey City	59,156,647	do	New Jersey	1864	Jersey City, N. J.	No
Liberty Bank of Buffalo	61,913,996	do	New York	May 5, 1919	Buffalo, N. Y.	Yes
Whitney National Bank of New Orleans	130,836,652	do	Louisiana	1883	New Orleans, La.	No
Wilmington Trust Co.	91,088,738	do	Delaware	Mar. 2, 1901	Wilmington, Del.	do
Hartford National Bank & Trust Co.	72,647,300	do	Connecticut	May 23, 1927	Hartford, Conn.	Yes
The Boatman's National Bank of St. Louis	56,386,912	do	Missouri	1873	St. Louis, Mo.	No
Commercial Trust Company of New Jersey	79,492,837	do	New Jersey	Dec. 8, 1889	Jersey City, N. J.	do
The Huntington National Bank of Columbus	66,266,196	do	Ohio	1905	Columbus, Ohio	do
State-Planters Bank & Trust Co.	55,698,460	do	Virginia	Mar. 1, 1926	Richmond, Va.	do
The Second National Bank of Boston	86,743,214	do	Massachusetts	Mar. 16, 1864	Boston, Mass.	do
Kings County Trust Co.	52,439,217	do	New York	1889	Brooklyn, N. Y.	do
Commerce Trust Co.	185,725,985	do	Missouri	Oct. 1, 1906	Kansas City, Mo.	do
First National Bank in Dallas	127,189,561	do	Texas	Jan. 1, 1930	Dallas, Tex.	do
The Hibernia National Bank in New Orleans	59,389,990	do	Louisiana	May 20, 1933	New Orleans, La.	do
American Trust Co.	63,348,363	do	North Carolina	July 1, 1901	Charlotte, N. C.	No
The New York Trust Co.	444,555,745	do	New York	Mar. 1, 1905	New York, N. Y.	do
The First National Bank	51,717,341	do	Tennessee	Mar. —, 1864	Memphis, Tenn.	do
do	991,279,978	do	Illinois	June 22, 1863	Chicago, Ill.	Yes
National Bank of Detroit	442,803,883	do	Michigan	Mar. 21, 1933	Detroit, Mich.	No
Fidelity-Philadelphia Trust Co.	145,664,368	do	Pennsylvania	July 8, 1926	Philadelphia, Pa.	do
Union Planters National Bank & Trust Co.	72,605,208	do	Tennessee	1869	Memphis, Tenn.	Yes
Industrial Trust Co.	137,365,742	do	Rhode Island	June 9, 1886	Providence, R. I.	No
Brooklyn Trust Co.	140,238,349	do	New York	Apr. 14, 1886	Brooklyn, N. Y.	Yes
The First National Bank & Trust Co. of Tulsa	51,672,632	do	Oklahoma	Jan. 2, 1899	Tulsa, Okla.	No
Empire Trust Co.	90,412,108	do	New York	1902	New York, N. Y.	Yes
State Street Trust Co.	98,096,857	do	Massachusetts	Apr. 13, 1891	Boston, Mass.	No
The Riggs National Bank of Washington, D. C.	109,936,923	do	District of Columbia	1896	Washington, D. C.	do
Manufacturers & Traders Trust Co.	112,836,073	do	New York	May —, 1893	Buffalo, N. Y.	Yes
American Security & Trust Co.	60,590,039	do	Virginia	Oct. 12, 1889	Washington, D. C.	No
Land Title Bank & Trust Co.	54,327,181	do	Pennsylvania	Nov. 1, 1927	Philadelphia, Pa.	do
Irvine Trust Co.	728,677,416	do	New York	Dec. 11, 1926	New York, N. Y.	Yes
First National Bank of Baltimore	198,954,601	do	Maryland	July 2, 1928	Baltimore, Md.	No
The National Shawmut Bank of Boston	213,570,764	do	Massachusetts	1836	Boston, Mass.	Yes
The Pennsylvania Co. for Insurances on Lives and Granting Annuities	259,915,465	do	Pennsylvania	Mar. 10, 1812	Philadelphia, Pa.	do
Chemical Bank & Trust Co.	686,675,710	do	New York	1844	New York, N. Y.	do
The Manhattan Co. (Bank of the Manhattan Co.)	570,438,077	do	do	Apr. 2, 1799	do	do
The Provident Savings Bank & Trust Co.	54,362,199	do	Ohio	Nov. —, 1900	Cincinnati, Ohio	No

Domestic financial corporations with total assets of \$50,000,000 and over—Continued

Name of corporation	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Rhode Island Hospital Trust Co.	\$59,878,756	Banking and trust.	Rhode Island.	1867.....	Providence, R. I.	Yes.....	Controlled by Rhode Island Hospital National Bank.
Rhode Island Hospital National Bank.....	57,101,426	do.....	do.....	Dec. 22, 1933	do.....	No.....	
Fidelity Union Trust Co.	165,559,820	do.....	New Jersey....	Feb. 14, 1887	Newark, N. J.	do.....	Controlled by Union Trust Co. of Pittsburgh.
Tradersmens National Bank & Trust Co.	58,790,168	do.....	Pennsylvania..	1846.....	Philadelphia, Pa.	Yes.....	
State Bank of Albany.....	61,864,871	do.....	New York.....	Feb. 1, 1937	Albany, N. Y.	No.....	
Central National Bank of Cleveland.....	167,767,835	do.....	Ohio.....	1890.....	Cleveland, Ohio.....	do.....	
Mellon National Bank.....	380,894,875	do.....	Pennsylvania..	June 13, 1902	Pittsburgh, Pa.	do.....	
The Union Trust Co. of Pittsburgh.....	386,912,784	do.....	do.....	Oct. 28, 1889	do.....	Yes.....	Controlled by Marine Bancorporation.
The Merchants National Bank.....	95,026,993	do.....	Massachusetts	Mar. 18, 1831	Boston, Mass.	No.....	
National Bank of Tulsa.....	64,391,214	do.....	Oklahoma.....	Apr. 25, 1933	Tulsa, Okla.	do.....	
First National Bank.....	89,823,608	do.....	Ohio.....	1863.....	Cincinnati, Ohio.....	do.....	
The United States National Bank.....	123,343,149	do.....	Oregon.....	Feb. 4, 1891	Portland, Oreg.	Yes.....	
J. P. Morgan & Co.	550,338,618	do.....	New York.....	Not given.....	New York, N. Y.	No.....	
Drexel & Co.	75,838,694	do.....	Pennsylvania..	1894.....	Philadelphia, Pa.	do.....	
The National Bank of Commerce of Seattle.....		do.....	Washington....	Apr. —, 1889	Seattle, Wash.	do.....	
Citizens National Trust & Savings Bank of Los Angeles.	125,811,877	do.....	California.....	Oct. 6, 1890	Los Angeles, Calif.	do.....	
South Texas Commercial National Bank of Houston..	50,925,447	do.....	Texas.....	Mar. 2, 1912	Houston, Tex.	do.....	
The Continental Bank & Trust Co. of New York.....	92,200,759	do.....	New York.....	Aug. 1, 1870	New York, N. Y.	do.....	1 affiliate.
Seattle-First National Bank.....	154,070,685	do.....	Washington....	Dec. 28, 1935	Seattle, Wash.	Yes.....	
National Commercial Bank & Trust Co. of Albany.....	58,702,820	do.....	New York.....	May 31, 1865	Albany, N. Y.	No.....	
Citizens Union National Bank.....	62,271,688	do.....	Kentucky.....	1863.....	Louisville, Ky.	do.....	
American Trust Co.	302,164,790	do.....	California.....	July 3, 1920	San Francisco, Calif.	No.....	
American National Bank & Trust Co. of Chicago.....	55,957,925	do.....	Illinois.....	June 20, 1928	Chicago, Ill.	do.....	
The American National Bank.....	60,483,946	do.....	Tennessee.....	1883.....	Nashville, Tenn.	do.....	
The Detroit Bank.....	139,712,238	do.....	Michigan.....	Jan. —, 1936	Detroit, Mich.	do.....	
California Bank.....	110,485,606	do.....	California.....	Nov. 12, 1920	Los Angeles, Calif.	Yes.....	
The Toledo Trust Co.	101,566,824	do.....	Ohio.....	Dec. —, 1923	Toledo, Ohio.....	No.....	
The Cleveland Trust Co.	380,070,329	do.....	do.....	1894.....	Cleveland, Ohio.....	do.....	
Manufacturers Trust Co.	748,563,877	do.....	New York.....	Oct. —, 1915	New York, N. Y.	Yes.....	
Continental Illinois National Bank & Trust Co. of Chicago.	1,232,513,014	do.....	Illinois.....	Mar. 18, 1929	Chicago, Ill.	do.....	
The First National Bank & Trust Co. of Oklahoma City.	64,393,944	do.....	Oklahoma.....	1889.....	Oklahoma City, Okla.	No.....	

The Anglo California National Bank of San Francisco	234,440,542	do	California	June 13, 1908	San Francisco, Calif.	do	Controlled by First Bank Stock Corporation.
The Fifth-Third Union Trust Co.	112,392,787	do	Ohio	June 1, 1908	Cincinnati, Ohio	do	
The Philadelphia National Bank	497,391,836	do	Pennsylvania	1864	Philadelphia, Pa.	do	
Mississippi Valley Trust Co.	108,238,720	do	Missouri	Mar. 1, 1930	St. Louis, Mo.	do	
The Public National Bank & Trust Co. of New York	176,481,316	do	New York	1917	New York, N. Y.	do	Controlled by North-west Bancorporation.
The Trust Co. of New Jersey	62,128,373	do	New Jersey	Apr. 6, 1898	Jersey City, N. J.	do	
Security-First National Bank of Los Angeles	649,173,423	do	California	Apr. 1, 1929	Los Angeles, Calif.	Yes	
First Bank Stock Corporation	448,366,051	do	Delaware	do	Minneapolis, Minn.	do	
The First National Bank of St. Paul	150,795,292	do	Minnesota	1863	St. Paul, Minn.	No	Controlled by North-west Bancorporation.
First National Bank & Trust Co. of Minneapolis	160,611,500	do	do	Jan. 12, 1865	Minneapolis, Minn.	do	
Northwest Bancorporation	438,637,521	do	Delaware	Jan. 24, 1929	do	Yes	
Northwestern National Bank & Trust Co. of Minneapolis	134,034,547	do	Minnesota	Jan. 2, 1934	do	No	
The First-Mechanics National Bank of Trenton	53,946,981	do	New Jersey	July 3, 1928	Trenton, N. J.	do	Do.
Lincoln-Alliance Bank & Trust Co.	81,553,631	do	New York	Dec. 1, 1920	Rochester, N. Y.	do	
Bankers Trust Co.	1,079,172,793	do	do	Mar. 24, 1903	New York, N. Y.	Yes	
Wells Fargo Bank & Union Trust Co.	274,884,171	do	California	Dec. 13, 1923	San Francisco, Calif.	No	
The National City Bank of Cleveland	159,850,191	do	Ohio	1865	Cleveland, Ohio	do	Do.
The Ohio National Bank	75,420,017	do	do	May 15, 1897	Columbus, Ohio	do	
Republic National Bank	85,066,308	do	Texas	1922	Dallas, Tex.	Yes	
Marine Midland Corporation	496,481,825	do	Delaware	Sept. 23, 1929	Jersey City, N. J.	do	
Marine Midland Trust Co. of New York	127,357,688	do	New York	June 28, 1930	New York, N. Y.	do	Do. Do. Do.
The Marine Trust Co. of Buffalo	187,058,853	do	do	Jan. 6, 1919	Buffalo, N. Y.	do	
Union Trust Co. of Rochester	52,638,826	do	do	Nov. 8, 1897	Rochester, N. Y.	do	
The New England Trust Co.	203,229,967	do	Massachusetts	Apr. 22, 1869	Boston, Mass.	No	
The National City Bank of New York	1,904,799,797	do	New York	1865	New York, N. Y.	Yes	Affiliated with the National City Bank of New York.
City Bank-Farmers Trust Co.	132,118,483	do	do	July 1, 1929	Brooklyn, N. Y.	do	
The San Francisco Bank	171,747,451	do	California	Dec. 31, 1924	San Francisco, Calif.	No	Affiliated with Peoples-Pittsburgh Trust.
The Philadelphia Saving Fund Society	384,857,365	do	Pennsylvania	Feb. 25, 1819	Philadelphia, Pa.	do	
Savings Bank Trust Co.	138,370,769	do	New York	Sept. 6, 1933	New York, N. Y.	do	
Peoples-Pittsburgh Trust Co.	111,005,904	do	Pennsylvania	Dec. 31, 1930	Pittsburgh, Pa.	do	
First National Bank of Pittsburgh	117,050,019	do	do	Jan. 18, 1918	do	do	Controlled by Peoples - Pittsburgh Trust.
Transamerica Corporation	205,209,082	do	Delaware	Oct. 11, 1928	San Francisco, Calif., New York, N. Y.	Yes	
Bank of America National Trust & Savings Association	1,430,337,201	do	California	Mar. 1, 1927	San Francisco, Calif., Los Angeles, Calif.	do	
First National Bank	94,584,420	do	Oregon	Sept. 8, 1865	Portland, Oreg.	do	
Wisconsin Bankshares Corporation	305,087,885	do	Wisconsin	Dec. 10, 1929	Milwaukee, Wis.	do	Controlled by Wisconsin Bankshares Corporation.
First Wisconsin National Bank	224,485,848	do	do	July 1, 1919	do	No	

Domestic financial corporations with total assets of \$50,000,000 and over—Continued

Name of corporation	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Adams Express Co.....	\$57,880,998	Express - investment trust.	New York....	July 1, 1854	New York, N. Y.....	Yes.....	Subsidiaries inactive.
State Street Investment Corporation.....	52,266,543	Investment trust.	Massachusetts	1924.....	Boston, Mass.....	do.....	
Lehman Corporation.....	73,065,126	do.....	Delaware.....	Sept. 11, 1929	New York, N. Y.....	No.....	
Solvay American Investment Corporation.....	67,551,146	do.....	do.....	Jan. 24, 1927	Jersey City, N. J.....	Yes.....	
Old Colony Trust Associates.....	116,816,699	do.....	Massachusetts	1928.....	Boston, Mass.....	do.....	
American General Corporation.....	59,036,505	do.....	Delaware.....	Nov. 23, 1935	Jersey City, N. J.....	do.....	
Incorporated Investors.....	77,487,133	do.....	Massachusetts	Nov. 23, 1925	Boston, Mass.....	No.....	
Massachusetts Investors Trust.....	98,737,672	do.....	do.....	Mar. 21, 1924	do.....	Yes.....	
Insull Utility Investments, Inc.....	253,984,342	do.....	Illinois.....	Dec. 27, 1928	Chicago, Ill.....	do.....	
Atlas Corporation.....	113,177,562	do.....	Delaware.....	Oct. 31, 1936	Jersey City, N. J.....	do.....	
International Utilities Corporation.....	54,070,412	do.....	Maryland.....	Oct. 8, 1924	New York, N. Y.....	do.....	
The Continental Insurance Co.....	104,436,414	Insurance	New York.....	Jan. 7, 1853	do.....	do.....	America Fore Group.
Fidelity-Phoenix Fire Insurance Co.....	83,260,111	do.....	do.....	Feb. —, 1910	do.....	do.....	Do.
Equitable Life Insurance Co. of Iowa.....	158,856,955	do.....	Iowa.....	Jan. 25, 1867	Des Moines, Iowa.....	No.....	Do.
Aetna Life Insurance Co.....	547,604,514	do.....	Connecticut.....	June —, 1850	Hartford, Conn.....	Yes.....	
The Lincoln National Life Insurance Co.....	131,309,339	do.....	Indiana.....	June 12, 1905	Fort Wayne, Ind.....	do.....	
The Mutual Benefit Life Insurance Co.....	618,458,286	do.....	New Jersey.....	Jan. 31, 1845	Newark, N. J.....	No.....	
National Fire Insurance Co. of Hartford.....	52,571,237	do.....	Connecticut.....	June 4, 1869	Hartford, Conn.....	Yes.....	
Great American Insurance Co.....	52,314,990	do.....	New York.....	Mar. —, 1872	New York, N. Y.....	do.....	
The Life Insurance Co. of Virginia.....	88,905,772	do.....	Virginia.....	Mar. 21, 1871	Richmond, Va.....	No.....	
New York Life Insurance Co.....	2,404,236,413	do.....	New York.....	1849.....	New York, N. Y.....	do.....	
John Hancock Mutual Life Insurance Co.....	796,393,305	do.....	Massachusetts.....	Apr. 21, 1862	Boston, Mass.....	do.....	
The Berkshire Life Insurance Co.....	56,371,274	do.....	do.....	May —, 1851	Pittsfield, Mass.....	do.....	
The Penn Mutual Life Insurance Co.....	636,875,662	do.....	Pennsylvania.....	Feb. 24, 1847	Philadelphia, Pa.....	do.....	
Home Life Insurance Co.....	91,218,291	do.....	New York.....	Apr. 30, 1860	New York, N. Y.....	do.....	
Insurance Co. of North America.....	110,500,873	do.....	Pennsylvania.....	Apr. 14, 1794	Philadelphia, Pa.....	Yes.....	
Aetna Insurance Co.....	54,676,070	do.....	Connecticut.....	June —, 1819	Hartford, Conn.....	do.....	
Phoenix Mutual Life Insurance Co.....	210,627,508	do.....	do.....	May —, 1851	do.....	No.....	
New England Life Insurance Co.....	376,627,126	do.....	Massachusetts.....	Apr. 1, 1835	Boston, Mass.....	do.....	
Northwestern National Life Insurance Co.....	60,171,035	do.....	Minnesota.....	Sept. 15, 1885	Minneapolis, Minn.....	do.....	
Kansas City Life Insurance Co.....	101,636,089	do.....	Missouri.....	May —, 1895	Kansas City, Mo.....	do.....	
The Equitable Life Assurance Society of the United States.....	1,996,722,365	do.....	New York.....	July 26, 1859	New York, N. Y.....	do.....	
Metropolitan Life Insurance Co.....	4,626,258,233	do.....	do.....	May —, 1866	do.....	do.....	
Massachusetts Mutual Life Insurance Co.....	575,809,475	do.....	Massachusetts.....	May 15, 1851	Springfield, Mass.....	do.....	
The Connecticut Mutual Life Insurance Co.....	291,783,270	do.....	Connecticut.....	June —, 1846	Hartford, Conn.....	do.....	
American National Insurance Co. of Galveston, Tex.....	64,908,197	do.....	Texas.....	Mar. 17, 1906	Galveston, Tex.....	do.....	
The Western & Southern Life Insurance Co.....	133,57,471	do.....	Ohio.....	Feb. —, 1888	Cincinnati, Ohio.....	do.....	
The Mutual Life Insurance Co. of New York.....	1,334,169,699	do.....	New York.....	Apr. 12, 1842	New York, N. Y.....	do.....	
Connecticut General Life Insurance Co.....	210,155,868	do.....	Connecticut.....	June —, 1865	Hartford, Conn.....	do.....	
The Travelers Insurance Co.....	860,93,045	do.....	do.....	June 17, 1863	do.....	Yes.....	

The Guardian Life Insurance Co. of America.....	119,022,614	do.	New York.....	Apr. 10, 1860	New York, N. Y.....	No.....	Controlled by Farmers Deposit Trust Co.
Fidelity Mutual Life Insurance Co.....	113,882,633	do.	Pennsylvania.....	Dec. 2, 1878	Philadelphia, Pa.....	do.	
Provident Mutual Life Insurance Co. of Philadelphia.....	315,686,302	do.	do.	Mar. 22, 1885	do.	do.	
Reliance Life Insurance Co. of Pittsburgh.....	100,226,267	do.	do.	Mar. 31, 1903	Pittsburgh, Pa.....	do.	
The Union Central Life Insurance Co.....	343,210,601	do.	Ohio.....	Feb. 2, 1867	Cincinnati, Ohio.....	do.	Controlled by Hartford Fire Insurance Co.
Bankers Life Co.....	205,340,101	do.	Iowa.....	June 30, 1879	Des Moines, Iowa.....	do.	
Southwestern Life Insurance Co.....	51,930,306	do.	Texas.....	Mar. 10, 1903	Dallas, Tex.....	do.	
The Phoenix Insurance Co.....	62,628,305	do.	Connecticut.....	May 31, 1854	Hartford, Conn.....	Yes.	
Hartford Fire Insurance Co.....	102,406,019	do.	do.	1810.....	do.	do.	Controlled by Hartford Fire Insurance Co.
Hartford Accident & Indemnity Co.....	64,839,882	do.	do.	Aug. 12, 1913	do.	No.	
The Home Insurance Co.....	140,839,482	do.	New York.....	Apr. —, 1853	New York, N. Y.....	Yes.	Controlled by Amerex Holding Co.
General American Life Insurance Co.....	123,520,027	do.	Missouri.....	June —, 1933	St. Louis, Mo.....	No.	
State Mutual Life Assurance Co.....	169,491,318	do.	Massachusetts.....	Mar. 16, 1844	Worcester, Mass.....	No.	
Pacific Mutual Life Insurance Co.....	139,289,432	do.	California.....	July 22, 1936	Los Angeles, Calif.....	do.	
Discount Corporation of New York.....	73,442,343	Discounts bank bills.	New York.....	Dec. —, 1918	New York, N. Y.....	do.	Controlled by Amerex Holding Co.
The First Boston Corporation.....	97,784,804	Underwriter loans.	Massachusetts.....	June 27, 1932	Boston, Mass.....	do.	
Christiana Securities Co.....	51,736,673	Holding Co. stocks.	Delaware.....	Mar. 1, 1915	Wilmington, Del.....	Yes.	
Commercial Investment Trust Corporation.....	462,540,028	Finance company, loans.	do.	Jan. 28, 1924	New York, N. Y.....	do.	
Household Finance Corporation.....	57,376,660	do.	do.	July 21, 1925	Chicago, Ill.....	do.	Controlled by Amerex Holding Co.
Commercial Credit Co.....	263,954,149	do.	do.	May 31, 1912	Baltimore, Md.....	do.	
American Express Co.....	71,154,087	Finance and exchange.	New York.....	Nov. 25, 1868	New York, N. Y.....	do.	
Associates Investment Co.....	64,699,645	Discounts auto notes.	Indiana.....	May 29, 1918	South Bend, Ind.....	Yes.	
General Motors Acceptance Corporation.....	518,363,925	Finance auto sales.	New York.....	Jan. 29, 1919	New York, N. Y.....	do.	Controlled by New York investors.
New York Investors, Inc.....	107,273,691	Finance and real estate.	do.	Jan. 19, 1929	Brooklyn, N. Y.....	Yes.	
The Prudence Co., Inc.....	60,013,454	Finance-mortgages.	do.	June 10, 1919	New York, N. Y.....	do.	
Stone & Webster, Inc.....	401,561,171	Engineering, etc.	Massachusetts.....	July 13, 1928	Boston and New York.....	Yes.	
Beneficial Industrial Loan Corporation.....	64,239,136	Industrial loans.	Delaware.....	May 9, 1929	Wilmington, Del.....	do.	Controlled by Van Sweringen Corporation.
Van Sweringen Corporation.....	56,367,460	Stocks and bonds.	do.	Apr. 21, 1930	Cleveland, Ohio.....	do.	
Cleveland Terminals Building Co.....	94,815,369	Real estate—terminals.	Ohio.....	Jan. 19, 1921	do.	do.	

List of utility companies, total assets of each being fifty millions or more

DATA AS OF YEAR 1936

Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
General Telephone Corporation.	\$79,873,299	Acquisition and ownership of securities of telephone and other utility companies.	New York....	Feb. 25, 1935	New York City...	Yes.....	
Commonwealth Edison Co.....	473,564,449	Acquisition and ownership of securities of public-utility and other companies.	Illinois.....	Sept. 17, 1907	Chicago.....	.....do.....	
Commonwealth Subsidiary Corporation.	66,925,949	Subholding company for securities of companies affiliated with Commonwealth Edison Co., including public-utility corporations, etc.	.....do.....	Dec. —, 1926	.....do.....	.....do.....	Commonwealth Edison Co.
Chicago Rapid Transit Co...	103,621,485	City and suburban transit for Chicago.	.....do.....	Jan. 9, 1924	.....do.....	.....do.....	Commonwealth Subsidiary Corporation.
Central Public Utility Corporation (Delaware).	50,328,483	Gas and electric companies....	Delaware....	July 29, 1932	Jersey City, N. J., and Wilmington, Del.	.....do.....	
Consolidated Electric & Gas Co.	138,979,963	Subholding company for Central Public Utilities Corporation.	.....do.....	.....do.....	Jersey City, N. J.	.....do.....	Central Public Utility Corporation.
Commonwealth & Southern Corporation, The.	1,162,848,900	Utility companies.....	.....do.....	May 23, 1929	Wilmington, Del.	.....do.....	
Alabama Power Co.....	194,761,402	Electric light and power service.	Alabama.....	Nov. 10, 1927	Birmingham.....	.....do.....	Commonwealth & Southern Corporation.
Consumers Power Co.....	251,829,408	Manufactured and natural gas, electric light and power, heat and water service.	Maine.....	Apr. 14, 1910	Jackson, Mich....	No.....	Do.
Georgia Power Co.....	276,616,285	Electric transportation, gas, heating, water, and ice service.	Georgia.....	June 26, 1930	Atlanta.....	No (by S. E. C.)	Do.
Tennessee Electric Power Co., The.	107,690,921	Electric transportation, motor bus, and electric service.	Maryland.....	May 27, 1922	Chattanooga,	No.....	Do.
Duke Power Co.....	211,289,162	Electric power and light service.	New Jersey...	May 1, 1917	Charlotte, N. C...	No (nonutility).	
Los Angeles Ry. Corporation....	70,193,231	City and suburban electric railway and bus service for Los Angeles.	California.....	Nov. 7, 1910	Los Angeles.....	No.....	
Hudson & Manhattan R. R. Co...	133,366,160	Owens and operates tunnel systems in New York City.	New York and New Jersey.	Dec. 1, 1906	New York City...	.....do.....	
Associated Gas & Electric Co....	1,038,600,275	Management and ownership of utility companies.	New York....	Mar. 17, 1906	Ithaca, N. Y.....	Yes.....	

Associated Gas & Electric Corporation.	1,091,225,026	Subholding company of American Gas & Electric Co.	Delaware.....	June 7, 1922	Wilmington, Del.....	do.....	Associated Gas & Electric Co.
Associated Electric Co.....	185,063,476	Subholding company of American Gas & Electric Corporation, operating subsidiaries furnish electric, gas, heating, ice, and water service.	do.....	Mar. 23, 1926	do.....	do.....	Associated Gas & Electric Corporation.
Pennsylvania Electric Co..	82,004,558	Electric light and power companies.	Pennsylvania.....	June 11, 1919	Johnstown, Pa.....	do.....	Central United States Utilities Co. of above group.
General Gas & Electric Corporation.	252,578,579	Subholding company of American Gas & Electric Corporation. Subsidiaries furnish general utility service.	Delaware.....	July 21, 1925	Wilmington, Del.....	do.....	Associated Gas & Electric Corporation.
Virginia Public Service Co..	56,732,190	Electric light and power service, ice and transit service companies.	Virginia.....	1926.....	Alexandria, Va.....	do.....	Eastern Power Corporation, General Gas & Electric group.
New York, Pennsylvania, New Jersey Utilities Co.	579,457,529	Subholding; general utility service companies.	Delaware.....	Oct. 1, 1935	Wilmington, Del.....	do.....	Associated Gas & Electric Corporation.
Metropolitan Edison Co..	115,585,854	Electric light and power, heat and gas service.	Pennsylvania.....	July 24, 1922	Reading, Pa.....	No.....	New York, Pennsylvania, New Jersey Utilities Co. Do.
New York State Electric & Gas Corporation.	98,500,722	Electric light and power and natural-gas service.	New York.....	1852.....	Ithaca, N. Y.....	Yes.....	Do.
Pennsylvania Edison Co..	50,676,755	Electric and gas service.	Pennsylvania.....	Oct. 26, 1915	Altoona, Pa.....	No.....	Do.
Rochester Gas & Electric Corporation.	81,598,703	Electric, natural- and manufactured-gas service.	New York.....	June 11, 1904	Rochester, N. Y.....	do.....	Do.
New England Gas & Electric Association.	107,472,205	Electric light, power, and gas companies.	Massachusetts.....	Dec. 31, 1926	Cambridge, Mass.....	Yes.....	Affiliated with American Gas & Electric Co.
Detroit Edison Co., The.....	332,314,169	Electric light and power.	New York.....	Jan. 17, 1903	Detroit, Mich.....	Yes (also operating).	
Nevada-California Electric Corporation.	53,279,269	Electric light, power, and heat, telephone and telegraph service.	Delaware.....	Dec. 12, 1914	Riverside, Calif., and Denver.	No (by S. E. C.).	
Pacific Lighting Corporation....	265,086,539	Gas and electric companies....	California.....	May 21, 1907	San Francisco, Calif.	Yes.....	
Southern California Gas Co....	74,517,163	Distribution of natural and manufactured gas.	do.....	Oct. 5, 1910	Los Angeles, Calif.	No.....	Pacific Lighting Corporation.
Los Angeles Gas & Electric Corporation.		Manufactured gas production, sale, and distribution.	do.....	June 22, 1909	do.....	do.....	Pacific Lighting Corporation merged with Southern California Gas Co. in 1937.
Boston Elevated Ry. Co.....	119,681,127	Electric railways.....	Massachusetts.....	June 2, 1894	Boston, Mass.....	do.....	
Brooklyn Union Gas Co., The..	116,408,058	Gas.....	New York.....	Sept. 7, 1895	Brooklyn, N. Y.....	do.....	
Chicago Railways Co.....	125,793,980	Electric railways, electric, and gasoline busses.	Illinois.....	Oct. 30, 1903	Chicago, Ill.....	do.....	Operated by Chicago Surface Lines.
Chicago City Railway Co.....	64,929,921	Electric railways and gasoline busses.	do.....	Feb. 14, 1859	do.....	do.....	Do.
American Gas & Electric Co....	463,924,055	Gas and electric companies....	New York.....	Dec. 20, 1906	New York City.....	Yes.....	
Appalachian Electric Power Co..	163,824,548	Electric light and power.....	Virginia.....	Mar. 4, 1923	Roanoke, Va.....	do.....	American Gas & Electric Co.
Indiana & Michigan Electric Co..	54,047,812	do.....	Indiana.....	Feb. 21, 1925	South Bend, Ind..	No.....	Do.
Ohio Power Co., The.....	123,305,119	do.....	Ohio.....	Apr. 30, 1907	Newark, Ohio.....	do.....	Do.

List of utility companies, total assets of each being fifty millions or more—Continued

DATA AS OF YEAR 1936

Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
American Telephone & Telegraph Co.	\$5,149,309,247	Telephone, cable, and radio service.	New York....	Mar. 3, 1885	New York City...	Yes.....	American Telephone & Telegraph Co. Do.
Bell Telephone Co. of Pennsylvania, The.	329,564,211	Communication, telephone....	Pennsylvania.	Sept. 18, 1879	Philadelphia, Pa..	No.....	
Chesapeake & Potomac Telephone Co. of Baltimore city, The.	52,426,771	.....do.....	Maryland.....	Mar. 8, 1884	Baltimore, Md....	.....do.....	
Illinois Bell Telephone Co.	330,883,105	.....do.....	Illinois.....	Jan. 14, 1881	Chicago.....	Yes.....	Do.
Michigan Bell Telephone Co.	186,884,396	.....do.....	Michigan.....	Jan. 28, 1904	Detroit, Mich....	.....do.....	Do.
Mountain States Telephone & Telegraph Co.	104,437,596	.....do.....	Colorado.....	July 17, 1911	Denver, Colo....	No.....	Do.
New England Telephone & Telegraph Co.	334,764,694	.....do.....	New York.....	Oct. 19, 1883	Boston, Mass....	Yes.....	Do.
New Jersey Bell Telephone Co.	216,447,133	.....do.....	New Jersey....	Aug. 12, 1904	Newark, N. J....	No.....	Do.
New York Telephone Co.	846,125,915	Telephone, trans-Atlantic and Pacific radio-telephone. Telephone service.	New York.....	June 18, 1896	New York City...	Yes.....	Do.
Northwestern Bell Telephone Co.	170,531,904	.....do.....	Iowa.....	Aug. 31, 1896	Omaha, Nebr....	.....do.....	Do.
Ohio Bell Telephone Co., The.	188,499,109	.....do.....	Ohio.....	Sept. 20, 1921	Cleveland.....	No.....	Do.
Pacific Telephone & Telegraph Co., The.	488,375,325	.....do.....	California.....	Dec. 31, 1906	San Francisco....	Yes.....	Do.
Southern California Telegraph Co.	180,478,584	.....do.....	.....do.....	Apr. 19, 1916	Los Angeles.....	No.....	Pacific Telephone & Telegraph Co.
Southern Bell Telephone & Telegraph Co.	279,913,286	.....do.....	New York.....	Dec. 20, 1879	Atlanta, Ga.....	Yes.....	American Telephone & Telegraph Co.
Southern New England Telephone Co.	84,831,810	.....do.....	Connecticut...	Apr. 19, 1882	New Haven, Conn	No.....	Licensee of American Telephone & Telegraph Co.
Southwestern Bell Telephone Co.	366,942,936	.....do.....	Missouri.....	Aug. 24, 1882	St. Louis, Mo....	Yes.....	American Telephone & Telegraph Co.
Western Electric Co., Inc.	283,231,912	Manufacture of telephone and telegraph equipment. Telephone service.	New York.....	Nov. 17, 1915	New York City...	.....do.....	Do.
Wisconsin Telephone Co.	83,042,613	Artificial and natural-gas service.	Wisconsin.....	July 7, 1882	Milwaukee.....	No.....	Do.
East Ohio Gas Co.	80,618,809	.....do.....	Ohio.....	Feb. 24, 1910	Cleveland.....	.....do.....	
Consolidated Edison Co. of New York, Inc.	1,293,908,132	Gas and electric service.....	New York.....	Nov. 10, 1884	New York City...	Yes (also operating).	Consolidated Edison Co. of New York, Inc. Do.
Brooklyn Edison Co., Inc.	254,974,511	Electric light and power.....	.....do.....	Jan. 27, 1919	Brooklyn, N. Y..	No.....	
Consolidated Telegraph & Electric Subway Co.	106,753,682	Construction, operation, and maintenance of subways for electric light and power lines of New York City.	.....do.....	Dec. 26, 1885	New York City...	.....do.....	
New York & Queens Electric Light & Power Co.	83,478,684	Purchase, transmission, and distribution of electricity.	.....do.....	July 23, 1900	Long Island City, N. Y.	.....do.....	Do.

New York Steam Corporation.	61, 875, 309	Steam for heating and power.	do.	July 14, 1921	New York City.	do.	Do.
Westchester Lighting Co.	96, 416, 877	Purchase and distribution of electricity.	do.	Nov. 5, 1900	New York City and Mount Vernon, N. Y.	do.	Do.
Columbia Gas & Electric Corporation.	714, 282, 265	Gas, electric, street railway, water, heat, and appliance companies.	Delaware.	Sept. 30, 1926	Wilmington, Del.	Yes.	
Cincinnati Gas & Electric Co.	130, 077, 281	Electric and gas service.	Ohio.	Apr. 3, 1937	Cincinnati, Ohio.	No (S. E. C.)	Columbia Gas & Electric Corporation.
Public Service Co. of Northern Illinois.	217, 410, 862	Electric, gas, heat, and water service.	Illinois.	Sept. 1, 1911	Chicago.	No.	Affiliated with Consolidated Edison Co.
Consolidated Gas Electric Light & Power Co. of Baltimore.	164, 395, 186	Electric and gas service.	Maryland.	June 20, 1906	Baltimore, Md.	Yes (also operating).	
Electric Bond & Share Co.	553, 194, 482	Ownership, advisory, and technical services to utility companies, both domestic and foreign.	New York.	Mar. 13, 1929	New York City.	Yes.	
Electric Power & Light Corporation.	700, 731, 742	Sub-holding company of Electric Bond & Share Co. in charge of operating subsidiaries.	Maine.	Mar. 11, 1925	do.	do.	Electric Bond & Share Co.
Arkansas Power & Light Co.	71, 973, 446	Electric power and light service.	Arkansas.	Oct. 3, 1926	Little Rock, Ark.	do.	Electric Power & Light Corporation.
New Orleans Public Service, Inc.	81, 545, 057	Electric power and light, natural gas, and transportation service.	Louisiana.	Sept. 27, 1922	New Orleans.	No.	Do.
United Gas Corporation.	284, 868, 535	Natural-gas and oil companies.	Delaware.	Mar. 29, 1930	New York City.	Yes.	Do.
United Gas Public Service Co.	249, 761, 068	Natural-gas wells, pipe lines, and distribution systems.	do.	July 11, 1930	Houston, Tex.	do.	United Gas Corporation.
Utah Power & Light Co.	120, 970, 993	Electric power and light service.	Maine.	Sept. 6, 1912	Salt Lake City, Utah.	Yes (also operating).	Electric Power & Light Corporation.
American Power & Light Co.	844, 803, 156	Electric power and light, gas, railway, and other public utility properties.	do.	Sept. 20, 1909	New York City.	Yes.	Affiliated with Electric Bond & Share Co.
Florida Power & Light Co.	139, 050, 143	Electric power and light, gas, railway, and water service.	Florida.	Dec. 28, 1925	Miami, Fla.	Yes (also operating).	American Power & Light Co.
Minnesota Power & Light Co.	80, 214, 237	Electric power and light service.	Minnesota.	Jan. 16, 1906	Duluth, Minn.	No.	Do.
Montana Power Co.	180, 323, 618	Electric power and light companies and service.	New Jersey.	Dec. 12, 1912	Butte, Mont.	Yes.	Do.
Texas Electric Service Co.	79, 734, 184	Electric power and light service.	Texas.	Dec. 19, 1929	Fort Worth, Tex.	No.	Do.
Texas Power & Light Co.	89, 575, 786	do.	do.	May 27, 1912	Dallas, Tex.	do.	Do.
Washington Water Power Co.	70, 521, 455	Electric power and light, water, and bus service.	Washington.	Mar. 15, 1889	Spokane, Wash.	Yes.	Do.

List of utility companies, total assets of each being fifty millions or more—Continued

DATA AS OF YEAR 1936

Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
Electric Board & Share Co.—Con. National Power & Light Co....	\$615,519,469	Electric power and light, water, heat, and transportation companies.	New Jersey...	Dec. 7, 1925	New York City...	Yes.....	Affiliated with Electric Bond & Share Co.
Carolina Power & Light Co.	99,758,884	Electric power and light and transportation service.	North Carolina.	Apr. 6, 1926	Raleigh, N. C.....	No.....	National Power & Light Co.
Houston Lighting & Power Co.	83,608,483	Electric power and light service.	Texas.....	Jan. 9, 1906	Houston, Tex.....	do.....	Do.
Lehigh Power Securities Corporation.	322,357,457	Electric power and light, gas, electric railway, and bus companies.	Delaware.....	Jan. 25, 1926	New York City...	Yes.....	Do.
Pennsylvania Power & Light Co.	245,059,451	Electric power and light and gas.	Pennsylvania.	June 4, 1920	Allentown, Pa....	do.....	National Power & Light Co. through Lehigh Power Securities Corporation.
Boston Edison Co.....	178,919,802	Electric power and light service.	Massachusetts.	Jan. 8, 1886	Boston, Mass.....	No.....	
Long Island Lighting Co.....	133,394,184	Electric power and light and gas service.	New York....	Dec. 31, 1910	New York City...	Yes.....	
Lone Star Gas Corporation.....	159,203,614	Natural gas companies.	Delaware.....	Jan. 23, 1926	Dallas and Wilmington, Del.	do.....	
Associated Telephone & Telegraph Co. ¹	69,899,770	Manufacture and sale of telephone equipment, research and development companies and telephone operations through subsidiaries.	do.....	Mar. 1, 1926	Kansas City, Mo.	do.....	
Interborough Rapid Transit Co.	127,847,187	Subway rapid transit system, city of New York.	New York....	May 6, 1902	New York City...	No.....	
Brooklyn-Manhattan Transit Corporation.	335,889,958	Transportation companies.....	do.....	May 24, 1923	Brooklyn, N. Y....	Yes.....	
Brooklyn & Queens Transit Corporation	114,772,042	Street surface railway lines.....	do.....	July 1, 1929	do.....	do.....	Brooklyn-Manhattan Transit Co.
New York Rapid Transit Corporation.	180,182,326	Passenger transit service over subway and elevated lines.	do.....	June 7, 1923	do.....	No.....	Do.
Jersey Central Power & Light Co.	83,603,519	Electric and gas service.....	New Jersey...	Feb. 9, 1925	Asbury Park, N. J.	Yes.....	Do.
Utilities Power & Light Corporation.	311,033,842	Controlling public utility and nonutility companies.	Virginia.....	Mar. 19, 1915	Chicago and New York.	do.....	
Indianapolis Power & Light Co.	82,949,711	Electric light and power service.	Indiana.....	Oct. 27, 1926	Indianapolis, Chicago, and New York.	do.....	Utilities Power & Light Corporation.

Interstate Power Co. (Delaware).	64,453,418	Electric, manufactured and natural gas, water, heat, transportation, and ice service.	Delaware.....	Apr. 18, 1925	Dubuque, Iowa, and Chicago.	Yes (also operating).	Do.
Laclede Gas Light Co.....	63,486,956	Manufactured and natural gas, city of St. Louis.	Missouri.....	Mar. 2, 1857	St. Louis, Chicago and New York.	do.....	Do.
American Water Works & Electric Co., Inc.	384,644,218	Controlling electric, gas, and transportation companies.	Delaware.....	June 16, 1927	New York City...	Yes.....	
Community Water Service Co.	64,331,928	Controlling water companies.	do.....	July 24, 1925	Dover, Del., and Jersey City.	do.....	American Water Works & Electric Co., Inc. Do.
West Penn Electric Co., The...	265,924,845	Controlling electric light, power, railway, gas, and motor-bus companies.	Maryland.....	Dec. 11, 1925	I r a d d o c k Heights, Md., and Jersey City.	do.....	
West Penn Power Co.....	135,662,141	Electric light and power, and heat service.	Pennsylvania.	Mar. 1, 1916	Pittsburgh, Pa....	do.....	West Penn Electric Co.
Monongahela West Penn Public Service Co.	66,149,042	Electric light and power, heat, natural gas, electric railway, and bus transportation.	West Virginia.	May 17, 1912	Fairmont, W. Va..	do.....	Do.
Twin City Rapid Transit Co.....	64,776,712	Street railways, busses, and generation of electricity.	New Jersey...	June 3, 1891	Minneapolis, Minn.	do.....	
Cities Service Co.....	1,267,788,666	Petroleum, electric and natural-gas companies.	Delaware.....	Sept. 2, 1910	New York City...	do.....	
Arkansas Natural Gas Corporation.	108,579,230	Gas companies.	do.....	Oct. 9, 1909	Shreveport, La....	Sub-holding...	Cities Service Co.
Arkansas Louisiana Gas Co.	53,928,667	Production, transportation, and distribution of natural gas.	do.....	Mar. 9, 1928	do.....	No.....	Arkansas Natural Gas Corporation.
Cities Service Power & Light Co.	173,208,765	Electric light and power companies.	do.....	Nov. 3, 1924	Jersey City, N. J.	Sub-holding...	Cities Service Co.
Federal Light & Traction Co.	52,244,111	Electric, gas, water, steam, railway, and bus.	New York.....	Mar. 13, 1910	New York City...	Sub-sub-holding.	Cities Service Power & Light Co. Do.
Public Service Co. of Colorado.	101,157,458	Electric and gas.	Colorado.....	Sept. 3, 1924	Denver, Colo....	do.....	
Toledo Light & Power Co.....	84,933,668	Electric light, power, and heat companies.	Maine.....	Jan. 30, 1913	Jersey City, N. J..	do.....	
The Toledo Edison Co.....	75,977,443	Electric light, power, gas, and heat.	Ohio.....	July 1, 1901	Toledo, Ohio.....	No.....	Toledo Light & Power Co.
Empire Gas and Fuel Co.....	489,347,679	Natural-gas and oil companies.	Delaware.....	Sept. 13, 1912	Jersey City, N. J..	Yes.....	Cities Service Co.
Cities Service Gas Co.....	96,037,255	Natural gas.	do.....	Jan. 18, 1922	Bartlesville, Okla.	No.....	Empire Gas & Fuel Co. Do.
Empire Oil & Refining Co.	213,996,758	Oil.	do.....	Mar. 5, 1917	do.....	Sub-holding...	Do.
Indian Territory Illuminating Oil Co.	130,183,548	Oil and natural gas.	New Jersey...	Dec. 11, 1901	do.....	No.....	Do.
Federal Water Service Corporation.	193,314,393	Water companies.	Delaware.....	June 21, 1926	New York City...	Yes.....	
Scranton-Spring Brook Water Service Co.	60,402,506	Water and gas.	Pennsylvania.	Apr. 5, 1867	Scranton, Pa....	do.....	Pennsylvania Water Service Co. Do.
Los Angeles Railway Corporation.	70,193,231	Electric railways.	California.....	Nov. 7, 1910	Los Angeles, Calif.	No.....	

¹ Amount for fiscal year 1935.

² Fiscal year ending Nov. 30, 1936.

List of utility companies, total assets of each being fifty millions or more—Continued

DATA AS OF YEAR 1936

Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
International Paper & Power Co.	\$290,352,291	Electric utility companies.....	Massachusetts	Nov. 1, 1928	Boston, Mass.....	Yes.....	International Paper & Power Co. International Hydro Electric System. New England Power Association. Massachusetts Power & Light Associates. North Boston Lighting Properties. Rhode Island Public Service Co. Narragansett Electric Co. Massachusetts Utilities Associates.
International Hydro-Electric System.	578,698,166	do.....	do.....	Mar. 25, 1929	do.....	do.....	
New England Power Association.	407,283,698	do.....	do.....	Jan. 2, 1926	do.....	do.....	
Massachusetts Power & Light Associates.	90,683,319	Electric and gas utility companies.	do.....	Jan. 1, 1931	do.....	do.....	
North Boston Lighting Properties.	57,039,011	do.....	do.....	Feb. 1, 1911	do.....	do.....	
Rhode Island Public Service Co.	89,027,517	Electric, heat, cab, and realty companies.	Rhode Island.	July —, 1926	Providence, R. I.	do.....	
Narragansett Electric Co.	73,195,881	Electric transmission company.	do.....	Apr. 8, 1926	do.....	do.....	Rhode Island Public Service Co. New England Power Association.
Massachusetts Utilities Associates.	59,234,456	Electric and gas companies.....	Massachusetts	Mar. 31, 1927	Boston, Mass.....	do.....	
Columbia Oil & Gasoline Corporation.	59,505,724	Oil, gasoline, and natural gas.....	Delaware.....	1930.....	Wilmington, Del.	do.....	Columbia Oil & Gasoline Corporation.
Panhandle Eastern Pipe Line Co.	53,849,521	Production, purchase, transmission, and sale of natural gas.	do.....	Dec. 23, 1929	Kansas City, Mo.	do.....	

DATA AS OF YEAR 1936 (EXCEPT WHERE INDICATED ON MARGIN)

Fiscal year	Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
Dec. 31, 1936	The Peoples Gas Light & Coke Co.	\$195,464,186	Supplies gas in Chicago.....	Illinois.....	Feb. 12, 1855	Chicago, Ill.....	Yes.....	United Light & Power Co.
Do.....	Public Service Co. of Northern Illinois.	217,410,862	Electricity, gas, water, and heat.	do.....	Sept. 1, 1911	do.....	No.....	
Do.....	Penn Western Gas & Electric Co.	77,681,356	Gas and electric utility companies.	Delaware.....	Mar. 27, 1934	Wilmington, Del.	Yes.....	
Do.....	United Light & Power Co., The (Delaware).	570,541,431	Railways, power, light, and gas companies.	Maryland.....	Nov. 20, 1923	Chicago, Ill.....	do.....	
Do.....	United Light & Railways Co.	504,931,823	Gas, electric, heat, ice, storage, and water companies.	Delaware.....	Sept. 8, 1920	do.....	do.....	

Do.....	American Light & Traction Co.	249,270,498	Gas, electric and traction companies.	New Jersey...	May —, 1901	.....do.....	.....do.....	Affiliated with United Light & Railways Co. (Delaware).
Do.....	Detroit City Gas Co.....	73,597,662	Gas business of Detroit...	Michigan.....	Jan. 12, 1888	Detroit, Mich....	No.....	Affiliated with American Light & Traction Co. (Delaware).
Do.....	Continental Gas & Electric Corporation.	222,946,927	Electric, ice, water, and traction companies.	Delaware.....	Nov. 16, 1912	Chicago, Ill.....	Yes.....	United Light & Railways Co. Delaware).
Do.....	Columbus & Southern Ohio Electric Co.	68,666,061	Suburban railways, light, heat, and power.	Ohio.....	Nov. —, 1913	Columbus, Ohio	.....do.....	Continental Gas & Electric Corporation.
Dec. 31, 1935	Kansas City Power & Light Co.	86,178,922	Generates and distributes electric energy.	Missouri.....	July 29, 1922	Kansas City, Mo.	No.....	Do.
Dec. 31, 1936	Middle West Corporation...	444,186,721	Electric, gas, water, and ice companies.	Delaware.....	Nov. 21, 1935	Chicago, Ill.....	Yes.....	
Do.....	Central & Southwest Utilities Co.	196,569,667	Investment Holding Co.—light, power, and ice companies.	.....do.....	July 31, 1925	.....do.....	.....do.....	Middle West Corporation.
Do.....	Central Power & Light Co.	58,156,055	Electric, gas, and street railway.	Massachusetts	Nov. 2, 1916	Corpus Christi, Tex.	No.....	Central & Southwest Utilities.
Do.....	Public Service Co. of Oklahoma.	54,668,861	Electric, gas, water, and railway companies.	Oklahoma.....	May 29, 1913	Tulsa, Okla....	Yes.....	Do.
Do.....	Kentucky Utilities Co.....	60,324,031	Electric, gas, water, and ice.	Kentucky.....	Aug. 13, 1912	Lexington, Ky..	.....do.....	Middle West Corporation.
Do.....	Northwest Utilities Co.....	84,433,227	Acquiring and holding securities of companies, public utilities operating.	Delaware.....	Dec. —, 1918	Chicago, Ill.....	.....do.....	Do.
Do.....	Wisconsin Power & Light Co.	66,507,497	Electric, gas, water, and transportation service.	Wisconsin.....	Feb. 21, 1917	Madison, Wis...	.....do.....	Do.
Do.....	Central Illinois Public Service Co.	93,221,148	Electric energy, lighting, gas, ice, and heat.	Illinois.....	Sept. 1, 1923	Springfield, Ill..	No.....	Do.
Do.....	Jersey Central Power & Light Co.	83,603,519	Electric power, light, and gas.	New Jersey...	Feb. 9, 1925	Asbury Park, N. J.	Yes.....	National Public Service Corporation.
Do.....	Central Maine Power Co.....	66,858,491	Electric energy, gas, railway, and water.	Maine.....	July 20, 1905	Augusta, Maine.	.....do.....	New England Public Service Co.
Do.....	Western Union Telegraph Co.	375,914,132	Controls telegraph corporations.	New York.....	Apr. 1, 1851	New York, N. Y.	.....do.....	
Do.....	Pacific Electric Ry. Co.....	114,530,558	Interurban Electric Ry system.	California.....	Sept. 1, 1911	Los Angeles, Calif.	No.....	Southern Pacific Co.
Do.....	The United Corporation.....	236,682,278	To acquire securities of electric power, light, and gas companies.	Delaware.....	Jan. 7, 1929	Wilmington, Del.	Yes.....	

List of utility companies, total assets of each being fifty millions or more—Continued

DATA AS OF YEAR 1936 (EXCEPT WHERE INDICATED ON MARGIN)

Fiscal year	Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
Dec. 31, 1936	The North American Co.....	\$900, 476, 925	Controls electric utility companies.	New Jersey...	June 14, 1890	New York, N. Y.	Yes.....	
Do.....	North American Edison Co.	619, 261, 410	Electric, gas, heating, and street railway.	Delaware.....	Mar. 25, 1922	do.....	do.....	North American Co.
Do.....	The Cleveland Electric Illuminating Co.	149, 770, 468	Electric light and power...	Ohio.....	Sept. 29, 1892	Cleveland, Ohio.	do.....	North American Edison Co.
Do.....	The Milwaukee Electric Ry. & Light Co.	148, 191, 252	Electric light and railways.	Wisconsin.....	Jan. 30, 1896	Milwaukee, Wis.	do.....	Do.
Do.....	Union Electric Co. of Missouri.	236, 766, 984	Electric light and power business.	Missouri.....	May 20, 1902	St. Louis, Mo.	do.....	Do.
Do.....	Mississippi River Power Co.	54, 601, 429	Furnishes electric power to utilities.	Maine.....	Aug. 3, 1910	Keokuk, Iowa.	Holding and operating.	Union Electric Co. of Missouri.
Do.....	Potomac Electric Power Co.	76, 279, 694	Electric power and light...	District of Columbia.	Apr. 28, 1896	Washington, D. C.	No.....	Washington Ry. & Electric Co.
Do.....	North American Light & Power Co.	326, 515, 107	Electric, gas, and railways.	Delaware.....	1924.....	Wilmington, Del.	Yes.....	The North American Co.
Do.....	Illinois Iowa Power Co.	212, 256, 320	Electric light, power, and railways.	Illinois.....	May 25, 1923	Monticello, Ill.	do.....	North American Light & Power Co.
Do.....	Kansas Power & Light Co.	61, 658, 843	Electric light, power, gas, street railway, and bus.	Kansas.....	Mar. 6, 1924	Topeka, Kans.	No.....	Do.
Do.....	Capital Transit Company.	58, 731, 437	Street railways and bus...	District of Columbia.	Sept. 28, 1933	Washington, D.	Yes.....	Affiliated with North American Co.
Do.....	Portland Electric Power Co.	102, 358, 834	Electric and traction companies.	Oregon.....	June 29, 1906	Portland, Oreg.	do.....	Portland Electric Power Co.
Do.....	Portland General Electric Co.	77, 394, 040	Electric companies, supply companies, and irrigation.	do.....	July 25, 1930	do.....	do.....	Portland Electric Power Co.
Dec. 31, 1933	Midland United Co.....	339, 424, 228	Holds public service utilities.	Delaware.....	Dec. 26, 1928	Chicago, Ill.	do.....	
Do.....	Midland Utilities Co.....	70, 542, 548	Investment Co., holds securities of utilities.	do.....	June —, 1923	do.....	do.....	Midland United Co.
Dec. 31, 1936	Northern Indiana Public Service Co.	98, 043, 506	Gas, electric, and water service.	Indiana.....	1912.....	Hammond, Ind.	No.....	Midland Utilities Co.
Do.....	Public Service Co. of Indiana.	88, 990, 657	Electric and gas service...	do.....	Sept. 5, 1912	Indianapolis, Ind.	do.....	Midland United Co.
Do.....	The Nevada-California Electric Corporation.	53, 279, 269	Telegraph, ice, electric, and cold storage.	Delaware.....	Dec. 12, 1914	Riverside, Calif.	do.....	
Do.....	Pacific Gas & Electric Co.....	740, 006, 976	Electric, gas, water, railway, steam heating.	California.....	Oct. 10, 1905	San Francisco, Calif.	Yes.....	

Do.....	San Joaquin Light & Power Corporation.	102,278,165	Electric, gas, and water service.	.....do.....	July 19, 1910	Fresno, Calif.....	.....do.....	Pacific Gas & Electric Co.
Do.....	St. Louis Public Service Co..	77,436,547	Street railway and motor bus	Missouri.....	Jan. 14, 1926	St. Louis, Mo.....	.....do.....	
Do.....	Stone & Webster, Inc.....	401,561,171	Engineering, designing, and construction.	Delaware.....	June 25, 1929	Boston, Mass.....	.....do.....	
Do.....	Engineers Public Service Co.	366,720,520	Electric light, power, and gas, railway, and bus companies.	.....do.....	June 23, 1925	New York, N. Y.....	.....do.....	Stone & Webster, Inc.
Do.....	Eastern Texas Electric Co. (Delaware).	56,691,466	Electric, street railway, and bus service.	.....do.....	Apr. —, 1924	Wilmington, Del.....	.....do.....	Engineers Public Service Co.
Do.....	Puget Sound Power & Light Co.	147,962,869	Electric, gas, and bus service.	Maine.....	Jan. 19, 1912	Seattle, Wash.....	.....do.....	Do.
Do.....	Virginia Electric & Power Co.	85,499,845	Electric power and light service.	Virginia.....	June 29, 1909	Richmond, Va.....	No.....	Do.
Do.....	The United Gas Improvement Co.	817,491,782	Investment in securities of gas and electric companies.	Pennsylvania.....	June 1, 1882	Philadelphia, Pa.....	Yes.....	
Do.....	The Connecticut Light & Power Co.	111,455,601	Electric, gas, and water service.	Connecticut.....	June 22, 1905	Hartford, Conn.....	.....do.....	United Gas Improvement Co.
Do.....	Philadelphia Electric Co.....	428,807,221	Electric, gas, and steam-heat service.	Pennsylvania.....	Oct. 31, 1929	Philadelphia, Pa.....	.....do.....	Do.
Do.....	Philadelphia Electric Power Co.	62,007,320	Electric generation.....	.....do.....	Apr. 23, 1924	.....do.....	.....do.....	Philadelphia Electric Co.
Dec. 31, 1933	Standard Power & Light Corporation (of Delaware).	1,159,324,305	Acquire public-utility securities—engineering and management.	Delaware.....	June 20, 1925	Jersey City, N. J.....	.....do.....	
Dec. 31, 1936	Standard Gas & Electric Co..	899,668,102	Acquiring, selling, operating electric, gas, and water companies.	.....do.....	Apr. 23, 1910	Chicago, Ill.....	.....do.....	
Do.....	Louisville Gas & Electric Co. (Delaware).	92,335,291	Electric, gas, and steam heating services through subsidiaries.	.....do.....	Feb. 17, 1917	Wilmington, Del.....	.....do.....	Standard Gas & Electric Co.
Do.....	Louisville Gas & Electric Co. (Kentucky).	90,716,886	Electric, gas, and steam heating services.	Kentucky.....	July 2, 1913	Louisville, Ky.....	.....do.....	Louisville Gas & Electric Co. (Delaware).
Do.....	Oklahoma Gas & Electric Co.	90,160,441	Electric light and power service.	Oklahoma.....	Feb. 27, 1902	Oklahoma City, Okla.....	No.....	Standard Gas & Electric Co.
Do.....	Philadelphia Co.....	402,420,545	Electric light, power, and gas service.	Pennsylvania.....	Mar. 22, 1871	Pittsburgh, Pa.....	Yes.....	Do.
Do.....	Duquesne Light Co.....	213,982,788	Electric light and power service.	.....do.....	Nov. 25, 1912	.....do.....	.....do.....	Philadelphia Co.
Do.....	Pittsburgh Railways Co.	91,179,049	Street railways.....	.....do.....	May 25, 1871	.....do.....	.....do.....	Do.
Do.....	Wisconsin Public Service Corporation.	55,317,972	Electric light and power service.	Wisconsin.....	July 17, 1883	Milwaukee, Wis.....	No.....	Standard Gas & Electric Co.
Do.....	Northern States Power Co. (Delaware).	276,880,959	Electricity, gas, steam heat, railway, telephone, water.	Delaware.....	Dec. 23, 1909	Chicago, Ill.....	Yes.....	Affiliated with Standard Gas & Electric Co.
Do.....	Northern States Power Co. (Minnesota).	258,101,270	Power and light, gas, steam heat, and bus.	Minnesota.....	June 16, 1909	.....do.....	Holding and operating.	Northern States Power Co. of Delaware.

List of utility companies, total assets of each being fifty millions or more—Continued

DATA AS OF YEAR 1936 (EXCEPT WHERE INDICATED ON MARGIN)

Fiscal year	Name of corporation	Total assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Subsidiary of what company
Dec. 31, 1931	New York State Railways...	\$56,577,827	Railways and bus lines...	New York...	Mar. 22, 1909	Rochester, N. Y.	Yes.....	Railway & Bus Associates.
Do.....	Consolidated Gas Electric Light & Power Co. of Baltimore.	164,395,186	Electricity, gas, steam heat, and appliances.	Maryland.....	June 20, 1906	Baltimore, Md.	do.....	
Do.....	Southern California Edison Co., Ltd.	394,063,556	Generates and sells electric energy for light, heat, and power.	California.....	July 6, 1909	Los Angeles, Calif.	No.....	
Do.....	Niagara Hudson Power Corporation.	651,352,414	Electric and gas service...	New York.....	Feb. 1, 1937	New York, N. Y.	Yes.....	Niagara Hudson Power Corporation.
Do.....	Buffalo, Niagara & Eastern Power Corporation.	243,370,734	Generation and sale of electric energy.	do.....	May 14, 1925	Buffalo, N. Y.	do.....	
Do.....	Buffalo Niagara Electric Corporation.	89,124,182	do.....	do.....	Apr. 1, 1937	do.....	No.....	
Do.....	The Niagara Falls Power Co.	94,444,007	Generation of electric energy.	do.....	Oct. 31, 1918	Niagara Falls, N. Y.	Yes.....	Do.
Do.....	Niagara, Lockport & Ontario Power Co.	59,045,502	Generation and sale of electric energy.	do.....	May 21, 1894	Buffalo, N. Y.	do.....	
July 31, 1937	Central New York Power Corporation.	127,897,476	No description.....	do.....	July 31, 1937	Not given.....	do.....	
Do.....	New York Power & Light Corporation.	144,431,682	Electric and gas service...	do.....	Oct. —, 1927	Albany, N. Y.	No.....	Niagara Hudson Power Corporation. Do.
June 30, 1936	Third Avenue Railway Co.	85,182,783	Street railways and bus...	do.....	Apr. 19, 1910	New York, N. Y.	Yes.....	
Dec. 31, 1936	Public Service Corporation of New Jersey.	691,861,304	Operates through subsidiaries. Gas, electric, and street transportation.	New Jersey...	May 6, 1903	Newark, N. J.	do.....	
Do.....	Public Service Electric & Gas Co.	433,593,752	Gas service and sales of appliances.	do.....	July 25, 1924	do.....	No.....	Public Service Corporation of New Jersey. Do.
Do.....	Public Service Coordinated Transport.	129,821,450	Street railways, bus lines, taxicabs, and ferries.	do.....	Jan. 31, 1928	do.....	Yes.....	
Do.....	Pacific Lighting Corporation.	265,086,539	Owens stocks of natural-gas companies.	California.....	May 21, 1907	San Francisco, Calif.	do.....	
Do.....	Southern California Gas Co.	74,517,164	Purchasing, transporting, and selling natural gas.	do.....	Oct. 5, 1910	Los Angeles, Calif.	No.....	Pacific Lighting Corporation.
Nov. 30, 1936	Oklahoma Natural Gas Co.	67,989,123	Production and sale of natural gas.	Delaware.....	Nov. 10, 1933	Tulsa, Okla.	Yes.....	

Dec. 31, 1933	Utilities Power & Light Corporation.	311,033,842	Electric, gas, water, heat, and bus service.	Virginia.....	Mar. 19, 1915	Chicago, Ill.....	do.....	Utilities Power & Light Corporation. Do. Do.
Do.....	Indianapolis Power & Light Co.	82,949,711	Electric, steam heat, and water service.	Indiana.....	Oct. 27, 1923	Indianapolis, Ind.	No.....	
Do.....	Interstate Power Co. (Delaware).	64,453,418	Electric, gas, water, heat, transportation, and ice.	Delaware.....	Apr. 18, 1925	Dubuque, Iowa.	Yes.....	
Do.....	The Laclede Gas Light Co.	63,486,956	Natural and manufactured gas service in St. Louis.	Missouri.....	Mar. 2, 1857	St. Louis, Mo.....	do.....	
Do.....	Philadelphia Rapid Transit Co.	100,624,165	Street railways.....	Pennsylvania.....	May 1, 1902	Philadelphia, Pa.	do.....	Leased to Philadelphia Rapid Transit.
June 30, 1934	Union Traction Co.....	58,466,935	Acquiring by lease or purchase stock of traction companies.	do.....	Sept. 6, 1895	do.....	do.....	
Dec. 31, 1933	National Fuel Gas Co.....	95,162,879	Produce, purchase, and sell natural gas.	New Jersey....	Dec. 8, 1902	Hoboken, N. J.....	do.....	

Domestic industrial corporations with total assets of \$50,000,000 and over

[Moody's Industrials, 1937]

Name of company	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Wheeling Steel Corporation.....	\$118,824,534	Manufacturing iron and steel products.	Delaware.....	June 21, 1920	Wheeling, W. Va..	Yes.....	Controlled by Pullman, Inc.
Lowe's, Inc.	138,562,712	Picture production and display.	do.....	Oct. —, 1919	Dover, Del.....	do.....	
Pullman, Inc.	265,234,814	Manufacturing and operating Pullman cars.	do.....	June 21, 1927	New York, N. Y..	do.....	
The Pullman Co.	293,178,813	do.....	Illinois.....	Feb. 22, 1867	Chicago, Ill.....	No.....	
National Biscuit Co.	123,979,156	Manufacturing bakery products.	New Jersey.....	Feb. 3, 1898	New York, N. Y..	Yes.....	
Leonard Oil Development Co.	50,422,552	Oil-well development.....	Delaware.....	Apr. 22, 1922	Pittsburgh, Pa..	do.....	
American I. G. Chemical Corporation.	69,090,783	Manufacturing chemicals, drugs, photography supplies.	do.....	Apr. 26, 1929	New York, N. Y..	do.....	
Crane Co.	101,698,035	Manufacturing plumbing and heating supplies.	Illinois.....	1865.....	Chicago, Ill.....	do.....	
The Procter & Gamble Co.	132,903,520	Manufacturing soaps and vegetable-oil products.	Ohio.....	May 5, 1905	Cincinnati, Ohio..	do.....	
Union Oil Co. of California.....	153,215,127	Developing oil wells and refining petroleum products.	California.....	Oct. 17, 1890	Los Angeles, Calif.	do.....	
United Shoe Machinery Corporation.	98,702,012	Shoe-manufacturing machinery and supplies.	New Jersey...	May 2, 1905	Boston, Mass.....	do.....	International Hydro-Electric system; 2 subsidiaries included in assets.
Ford Motor Co.	717,359,366	Manufacturing automobiles.	Michigan.....	June 16, 1903	Dearborn, Mich..	do.....	
Republic Steel Corporation.....	343,949,673	Manufacturing steel and iron products.	New Jersey...	May 3, 1899	Cleveland, Ohio..	do.....	
The Texas Corporation.....	540,148,688	Refining petroleum products.	Delaware.....	Aug. 26, 1926	New York, N. Y..	do.....	
The American Rolling Mill Co.	128,649,729	Manufacturing sheet metal, etc.	Ohio.....	June 29, 1917	Middletown, Ohio.	do.....	
Owens-Illinois Glass Co.	72,975,512	Manufacturing glass products.	do.....	Dec. 16, 1907	Toledo, Ohio.....	do.....	
Packard Motor Car Co.	58,587,540	Manufacturing automobiles.	Michigan.....	Sept. 1, 1909	Detroit, Mich.....	do.....	
Pittsburgh Plate Glass Co.	144,438,975	Manufacturing glass, paints, etc.	Pennsylvania..	Nov. 3, 1920	Pittsburgh, Pa.....	do.....	
U. S. Smelting, Refining & Mining Co.	71,506,738	Mining, milling, and smelting ores and minerals.	Maine.....	Jan. 9, 1906	Boston, Mass.....	do.....	
Wilson & Co., Inc.	86,776,871	Meat packing.....	Delaware.....	Nov. 30, 1925	Chicago, Ill.....	do.....	
International Paper & Power Co.	881,420,790	Paper manufacturing and power mills.	Massachusetts.	Nov. 1, 1923	Boston, Mass.....	do.....	

International Paper Co.....	239,577,963	Paper products manufactur- ing.	New York.....	Jan. 31, 1898	Corinth, N. Y.....	do.....	Controlled by International Paper & Power Co.
Richfield Oil Corporation.....	50,404,560	Refining petroleum prod- ucts.	Delaware.....	1937.....	Los Angeles, Calif.....	do.....	
Standard Oil Co. (New Jersey).....	1,841,849,697	do.....	New Jersey.....	Aug. 5, 1882	New York, N. Y.....	do.....	
Twentieth Century-Fox Film Cor- poration.	56,683,549	Production and exhibition of moving pictures.	New York.....	Feb. 1, 1915	do.....	do.....	
United States Gypsum Co.....	64,246,510	Manufacturing gypsum, etc.	Illinois.....	1920.....	Chicago, Ill.....	do.....	
Houston Oil Co. of Texas.....	50,903,974	Refining petroleum prod- ucts.	Texas.....	July 5, 1901	Houston, Tex.....	No.....	
Montgomery Ward & Co.....	206,682,130	Mail-order and retail stores..	Illinois.....	Nov. 21, 1919	Chicago, Ill.....	Yes.....	
Safeway Stores, Inc.....	66,726,173	Retail grocery chain.....	Maryland.....	Mar. 24, 1926	Reno, Nev.....	do.....	
The Coca-Cola Co.....	68,416,435	Manufacturing soft drinks.	Delaware.....	Sept. 5, 1919	Wilmington, Del.....	do.....	
Hearst Consolidated Publications, Inc.	128,584,281	Publishing newspapers and magazines.	do.....	May 9, 1930	San Francisco, Calif.....	do.....	
Caterpillar Tractor Co.....	52,700,092	Manufacturing tractors and farm machinery.	California.....	Apr. 15, 1925	Peoria, Ill.....	No.....	
Andes Copper Mining Co.....	86,996,793	Mining copper.....	Delaware.....	Jan. 20, 1916	New York, N. Y.....	Owens Potro- rillos Ry. Co., Chile.	Controlled by Anaconda Copper Mining Co.
Chile Copper Co.....	156,339,867	do.....	do.....	Apr. 16, 1913	do.....	Yes.....	Do.
Greene Cananea Copper Co.....	56,655,601	do.....	Minnesota.....	Dec. 26, 1906	do.....	do.....	Do.
Yellow Truck & Coach Manufactur- ing Co.	57,873,443	Manufacturing motor coaches.	Maine.....	Aug. 25, 1910	Pontiac, Mich.....	do.....	Controlled by General Mo- tors Corporation.
California Petroleum Corporation.....	59,274,043	Refining petroleum prod- ucts.	Virginia.....	Sept. 27, 1912	Los Angeles, Calif.....	do.....	Controlled by Texas Cor- poration.
Humble Oil & Refining Co.....	276,938,155	do.....	Texas.....	June 21, 1917	Houston, Tex.....	do.....	Controlled by Standard Oil Co. (New Jersey).
Hearst Publications, Inc.....	144,207,394	Publishing newspapers and magazines.	California.....	Apr. 22, 1924	San Francisco, Calif.....	do.....	Controlled by Hearst Con- solidated Publications, Inc.
Allied Chemical & Dye Corporation.....	377,501,577	Manufacturing dyes and chemicals.	New York.....	Dec. 17, 1920	New York, N. Y.....	do.....	
American Can Co.....	211,373,695	Manufacturing tin cans, etc.	New Jersey.....	Mar. 19, 1901	do.....	do.....	
Chrysler Corporation.....	210,676,184	Manufacturing automobiles.	Delaware.....	June 6, 1925	do.....	do.....	
American Locomotive Co.....	56,320,557	Manufacturing locomotives, etc.	New York.....	June 10, 1901	do.....	do.....	
Continental Can Co., Inc.....	104,743,439	Manufacturing cans, recep- tacles.	do.....	Jan. 17, 1913	do.....	do.....	
Associated Rayon Corporation.....	54,638,702	Corporation liquidating.....	Maryland.....	Nov. 23, 1928	Baltimore, Md.....	No.....	Controlled by Algemeene Kunstzi de Unie.
The Cleveland-Cliffs Iron Co.....	67,636,198	Mining—iron ore, etc.	Ohio.....	Dec. 7, 1920	Cleveland, Ohio.....	Yes.....	
Columbian Carbon Co., The.....	50,910,482	Manufacturing inks, pig- ments, carbon, and bone black.	Delaware.....	Aug. 24, 1921	New York, N. Y.....	do.....	
The American Metal Co., Ltd.....	68,024,294	Smelting and refining non- ferrous metals.	New York.....	June 17, 1887	do.....	do.....	
The American Sugar Refining Co.....	117,886,858	Refining cane sugar and sirup	New Jersey.....	Jan. 10, 1891	do.....	do.....	
E. I. du Pont de Nemours & Co.....	721,230,126	Manufacturing chemicals, synthetics, explosives, etc.	Delaware.....	Sept. 4, 1915	Wilmington, Del.....	do.....	
American Woolen Co., Inc.....	78,629,284	Manufacturing woolen yarns and textiles.	Massachusetts	Feb. 15, 1916	New York, N. Y.....	do.....	
Westinghouse Electric & Manufac- turing Co.	203,735,083	Manufacturing electrical equipment.	Pennsylvania.....	Apr. 9, 1872	Pittsburgh, Pa.....	do.....	

Domestic industrial corporations with total assets of \$50,000,000 and over—Continued

[Moody's Industrials, 1937]

Name of company	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Allis-Chalmers Manufacturing Co.	\$78,999,876	Manufacturing farm machinery.	Delaware	Mar. 15, 1913	Milwaukee, Wis.		Holds 1/4 voting stock American Hydraulic Corporation. Controls Allis-Chalmers, Rumley, Ltd.
The Atlantic Refining Co.	165,994,232	Refining petroleum products	Pennsylvania	Apr. 29, 1870	Philadelphia, Pa.	Yes	
The Baldwin Locomotive Works	72,133,257	Manufacturing locomotives, etc.	do	June 7, 1911	Eddystone, Pa.	do	
Continental Baking Corporation	50,404,341	Manufacturing bakery products.	Maryland	Nov. 6, 1924	New York, N. Y.	do	
The Cudahy Packing Co.	82,323,133	Meat packing.	Maine	Oct. 7, 1915	Chicago, Ill.	do	
The Curtis Publishing Co.	70,776,379	Magazine publishing.	Pennsylvania	Dec. —, 1921	Philadelphia, Pa.	do	
Climax Molybdenum Co.	80,238,735	Manufacturing molybdenum.	Delaware	Jan. —, 1918	New York, N. Y.	No	
Allied Stores Corporation	64,259,566	Operating department stores	do	May 10, 1928	Paterson, N. J.	Yes	
Continental Oil Co.	98,550,425	Refining petroleum products.	do	Oct. 8, 1920	Ponca City, Okla.	do	
Deere & Co.	88,415,947	Manufacturing farm machinery.	Illinois	Apr. 7, 1911	Moline, Ill.	do	
Firestone Tire & Rubber Co., The	147,105,332	Manufacturing auto tires and rubber products.	Ohio	Mar. 4, 1910	Akron, Ohio	do	
Marshall Field & Co.	90,335,990	Operating department stores	Illinois	Mar. 7, 1901	Chicago, Ill.	do	
Aluminum Co. of America	223,043,521	Manufacturing aluminum.	Pennsylvania	1888	Pittsburgh, Pa.	do	
Celanese Corporation of America	51,147,036	Manufacturing synthetic yarns and fabrics.	Delaware	Jan. 5, 1918	New York, N. Y.	do	
Wm. Wrigley, Jr., Co.	62,639,162	Manufacturing chewing gum.	do	Oct. 18, 1927	Chicago, Ill.	do	
Tennessee Coal, Iron & R. R. Co.	117,804,885	Manufacturing pig-iron and finished steel products.	Tennessee	Mar. 24, 1860	Birmingham, Ala.	do	Controlled by United States Steel Corporation. Controlled by Warner Bros. Pictures, Inc.
Stanley Co. of America	75,125,742	Moving-picture exhibition.	Delaware	June 3, 1919	New York, N. Y.	do	
American Cyanamid Co.	62,858,018	Manufacturing chemicals, etc.	Maine	July 22, 1907	do	do	
American Radiator & Standard Sanitary Corporation	163,300,456	Manufacturing plumbing and heating apparatus.	Delaware	Mar. 26, 1929	do	do	
American Smelting & Refining Co.	161,266,368	Smelting and refining non-ferrous metals.	New Jersey	Apr. 4, 1899	do	do	
The Borden Co.	123,894,096	Dairy products.	do	Apr. 24, 1899	do	do	
Crucible Steel Co. of America	112,818,358	Manufacturing steel-mill products.	do	July 21, 1900	do	do	

F. W. Woolworth Co.	202,891,244	Variety store chain	New York	Dec. 15, 1911	do	do	Includes Canadian subsidiaries.
General Mills, Inc.	59,009,084	Grain mill products	Delaware	June 20, 1928	Minneapolis, Minn.	do	
Armour & Co. (Illinois)	323,431,840	Meat packing	Illinois	Apr. 7, 1900	Chicago, Ill.	do	1 subrailway Express Motor Transport, Inc.
Bethlehem Steel Corporation	676,060,838	Manufacturing steel-mill products	Delaware	July 1, 1919	New York, N. Y.	do	
General Foods Corporation	74,195,622	Manufacturing food products	do	Feb. 11, 1922	do	do	
Westinghouse Air Brake Co.	54,010,245	Manufacturing airbrakes, etc.	Pennsylvania	Sept. 28, 1869	Wilmerding, Pa.	do	
Newport News Shipbuilding & Dry Dock Co.	66,774,282	Construction and repairs, vessels	Virginia	Jan. 26, 1886	Newport News, Va.	No	
Railway Express Agency, Inc.	51,789,651	Railway express	Delaware	Dec. 7, 1928	New York, N. Y.	do	
Wesson Oil & Snowdrift Co., Inc.	53,749,125	Cottonseed products and vegetable oils, etc.	Louisiana	May 20, 1925	New Orleans, La.	Yes	
Crown Zellerbach Corporation	102,182,165	Manufacturing paper products	Nevada	Aug. 28, 1924	San Francisco, Calif.	do	
Federated Department Stores, Inc.	54,314,940	Operator department-store chain	Delaware	Nov. 25, 1929	New York, N. Y.	do	
The Quaker Oats Co.	63,517,557	Manufacturing cereals, etc.	New Jersey	Sept. 21, 1901	Chicago, Ill.	do	
R. J. Reynolds Tobacco Co.	156,725,279	Manufacturing tobacco products	do	Apr. 3, 1899	Winston - Salem, N. C.	No	Controlled by Crown Zellerbach Corporation. Controlled by United States Steel Corporation.
The Standard Oil Co. (of Ohio)	60,987,211	Refining petroleum products	Ohio	Jan. 10, 1870	Cleveland, Ohio	Yes	
United States Steel Corporation	1,863,976,519	Manufacturing steel products and cement	New Jersey	Feb. 25, 1901	New York, N. Y.	do	
Eastman Kodak Co.	170,743,723	Manufacturing photographic equipment	do	Oct. 24, 1901	Rochester, N. Y.	do	
American Tobacco Co., The	255,411,555	Manufacturing tobacco products	do	Jan. 20, 1890	New York, N. Y.	do	
Glen Alden Coal Co.	148,726,157	Mining coal	Pennsylvania	Sept. —, 1921	Scranton, Pa.	do	
The Great Atlantic & Pacific Tea Co. of America	190,546,302	Retail grocery chain	Maryland	May 29, 1925	Baltimore, Md.	do	
Harbison-Walker Refractories Co.	55,338,222	Manufacturing fire-brick and clay products	Pennsylvania	June 20, 1902	Pittsburgh, Pa.	do	
St. Regis Paper Co.	58,698,154	Manufacturing paper products	New York	Jan. 3, 1899	New York, N. Y.	do	
General American Transportation Corporation	102,563,217	Manufacturing, etc., freight cars	do	July 5, 1916	Chicago, Ill.	do	
Inland Steel Co.	137,644,116	Manufacturing steel and iron products	Delaware	Feb. 6, 1917	do	do	
Crown Willamette Paper Co.	59,237,600	Manufacturing paper products	do	Jan. 6, 1928	San Francisco, Calif.	No	
Illinois Steel Co.	104,327,729	Manufacturing pig-iron and semifinished steel products	Illinois	May 2, 1889	Chicago, Ill.	do	

Domestic industrial corporations with total assets of \$50,000,000 and over—Continued

[Moody's Industrials, 1937]

Name of company	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Nash-Kelvinator Corporation.....	\$57,653,535	Manufacturing autos and electrical devices.	Maryland.....	July 29, 1916	Kenosha, Wis.....	Yes.....	Merged Nash Motors Co. and Kelvinator Corporation, Jan. 4, 1937.
Swift & Co.....	327,576,507	Meat packing.....	Illinois.....	Apr. 1, 1885	Chicago, Ill.....	do.....	
Brown Co.....	75,967,561	Manufacturing paper and cellulose products.	Maine.....	Mar. —, 1888	Portland, Maine.....	do.....	
The M. A. Hanna Co.....	54,507,857	Mining coal and iron.....	Ohio.....	Dec. 9, 1922	Cleveland, Ohio.....	do.....	
The Hudson Coal Co.....	98,240,619	Mining coal, etc.....	Pennsylvania.....	June 2, 1871	Scranton, Pa.....	do.....	Controlled by Koppers Associates, Inc. Controlled by Koppers Co.
J. C. Penny Co.....	82,326,819	Department-store chain.....	Delaware.....	Dec. 15, 1924	Wilmington, Del.....	do.....	
Sears, Roebuck & Co.....	275,291,947	Mail-order and retail stores.	New York.....	June 16, 1906	New York, N. Y.....	do.....	
Tide Water Associated Oil Co.....	190,793,313	Refining petroleum products.	Delaware.....	Mar. 5, 1926	do.....	do.....	
American Car & Foundry Co.....	100,117,771	Manufacturing railway cars.	New Jersey.....	Feb. 20, 1899	Jersey City, N. J.....	do.....	
The Kroger Grocery & Baking Co.....	57,971,794	Retail grocery chain.....	Ohio.....	Apr. 3, 1902	Cincinnati, Ohio.....	do.....	
The Youngstown Sheet & Tube Co.....	213,822,894	Manufacturing pig-iron and steel products.	do.....	Nov. 23, 1900	Youngstown, Ohio.....	do.....	
International Harvester Co.....	398,873,029	Manufacturing farm machinery.	New Jersey.....	Sept. 19, 1918	Chicago, Ill.....	do.....	
Jones & Laughlin Steel Corporation.....	220,670,844	Manufacturing steel products.	Pennsylvania.....	Dec. 19, 1922	Pittsburgh, Pa.....	do.....	
S. H. Kress & Co.....	73,535,206	Variety-store chain.....	New York.....	June 21, 1916	New York, N. Y.....	do.....	
West Virginia Pulp & Paper Co.....	56,437,488	Manufacturing paper products.	Delaware.....	1899	do.....	do.....	
International Shoe Co.....	85,797,596	Manufacturing boots and shoes.	do.....	Mar. 16, 1921	St. Louis, Mo.....	do.....	
Kennecott Copper Corporation.....	335,459,402	Mining and smelting copper.	New York.....	Apr. 29, 1915	New York, N. Y.....	do.....	Controlled by Koppers Associates, Inc. Controlled by Koppers Co.
Koppers Co.....	129,666,701	Manufacturing coal, gas, and coke plants.	Delaware.....	Jan. 25, 1927	Pittsburgh, Pa.....	do.....	
Eastern Gas & Fuel Associates.....	229,549,291	Sale coal and production coke and other byproducts.	Massachusetts. ¹	July 18, 1929	Boston, Mass.....	do.....	
S. S. Kresge Co.....	120,561,927	Variety-store chain.....	Michigan.....	Mar. 9, 1916	Detroit, Mich.....	do.....	
McKesson & Robbins, Inc. (Md.).....	82,672,219	Manufacturing drugs, etc.....	Maryland.....	Aug. 4, 1923	Bridgeport, Conn.....	do.....	
Phelps Dodge Corporation.....	186,536,342	Mining and smelting copper.	New York.....	Aug. 10, 1885	New York, N. Y.....	do.....	
Soco-Vacuum Oil Co., Inc.....	806,513,037	Refining petroleum products.	do.....	Aug. 10, 1882	do.....	do.....	
The B. F. Goodrich Co.....	140,749,521	Manufacturing auto tires and rubber products.	do.....	May 2, 1912	do.....	do.....	
Interlake Iron Corporation.....	58,996,534	Manufacturing pig-iron, coal, and coke byproducts.	do.....	June 23, 1905	Chicago, Ill.....	do.....	
The Lehigh Coal & Navigation Co.....	94,957,296	Mining coal and transportation.	Pennsylvania.....	Feb. 13, 1822	Philadelphia, Pa.....	do.....	

Liggett & Myers Tobacco Co.....	175, 978, 835	Manufacturing tobacco products.	New Jersey...	Nov. 24, 1911	St. Louis, Mo.....	do.....
P. Lorillard Co.....	56, 782, 287	do.....	do.....	do.....	Jersey City, N. J.....	do.....
Pittsburgh Steel Co.....	63, 512, 190	Manufacturing coke, pig-iron, and steel products.	Pennsylvania...	Nov. 11, 1901	Pittsburgh, Pa.....	do.....
Colgate-Palmolive Peet Co.....	69, 595, 550	Manufacturing toilet preparations.	Delaware.....	Aug. —, 1928	Jersey City, N. J.....	do.....
Libby, McNeill & Libby.....	56, 741, 670	Canning fruits, vegetables, and meats.	Maine.....	Aug. 6, 1903	Chicago, Ill.....	do.....
Mid-Continent Petroleum Corporation.	62, 980, 580	Refining petroleum products	Delaware.....	July 9, 1917	Tulsa, Okla.....	do.....
Philadelphia & Reading Coal & Iron Corporation.	87, 218, 990	Mining coal and iron, manufacturing iron products.	do.....	Dec. 19, 1923	Philadelphia, Pa.....	do.....
United States Rubber Co.....	172, 365, 561	Manufacturing auto tires and rubber products.	New Jersey...	Feb. 30, 1892	New York, N. Y.....	do.....
Warner Bros. Pictures, Inc.....	173, 009, 012	Moving-picture production and display.	Delaware.....	Mar. 3, 1923	do.....	do.....
International Business Machines Corporation.	65, 648, 555	Manufacturing business machines.	New York...	June 15, 1911	do.....	do.....
Pittsburg Coal & Co.....	139, 995, 664	Coal mining.	Pennsylvania...	Jan. 12, 1916	Pittsburgh, Pa.....	do.....
Newmont Mining Corporation.....	78, 135, 351	Financing mining projects.	Delaware.....	May 2, 1921	New York, N. Y.....	do.....
California Packing Corporation.....	64, 217, 760	Canning fruits, vegetables, and fish.	New York.....	Oct. 18, 1916	San Francisco, Calif.....	do.....
Consolidated Oil Corporation.....	342, 880, 439	Refining petroleum products	do.....	Sept. 23, 1919	New York, N. Y.....	do.....
The Goodyear Tire & Rubber Co.....	197, 350, 217	Manufacturing auto tires and rubber products.	Ohio.....	Aug. 28, 1898	Akron, Ohio.....	do.....
The Great Western Sugar Co.....	80, 312, 499	Refining beet sugar.	New Jersey.....	Jan. —, 1905	Denver, Colo.....	do.....
Gulf Oil Co.....	442, 029, 481	Refining petroleum products	Pennsylvania...	Aug. 9, 1922	Pittsburgh, Pa.....	do.....
National Lead Co.....	107, 529, 002	Manufacturing lead products, paint, and metal.	New Jersey.....	Dec. 7, 1891	New York, N. Y.....	do.....
Ohio Oil Co.....	138, 468, 100	Refining petroleum products	Ohio.....	Aug. 1, 1867	Findlay, Ohio.....	do.....
Standard Brands, Inc.....	70, 340, 244	Manufacturing food products.	Delaware.....	June 28, 1929	New York, N. Y.....	do.....
Union Carbide & Carbon Corporation.	364, 022, 210	Manufacturing carbides and chemicals.	New York.....	Nov. 1, 1927	do.....	do.....
Anaconda Copper Mining Co.....	592, 021, 890	Mining and smelting copper.	Montana.....	June 18, 1895	Butte, Mont.....	do.....
Gimbel Bros., Inc.....	80, 021, 165	Department stores.	New York.....	Aug. 22, 1922	New York, N. Y.....	do.....
R. H. Macy & Co., Inc.....	92, 922, 693	do.....	do.....	1919.....	do.....	do.....
Stelly Oil Co.....	51, 223, 337	Refining petroleum products	Delaware.....	Aug. 20, 1919	Tulsa, Okla.....	do.....
National Dairy Products Corporation.	200, 228, 959	Dairy products.	do.....	Dec. 8, 1923	New York, N. Y.....	do.....
The National Supply Co. of Delaware.	69, 821, 707	Manufacturing oil-industry machinery.	do.....	Dec. 11, 1922	do.....	do.....
Radio Corporation of America.....	87, 750, 056	Manufacturing radios and electric supplies.	do.....	Oct. 17, 1919	do.....	do.....
General Motors Corporation.....	1, 518, 188, 800	Manufacturing automobiles.	do.....	Oct. 13, 1916	Detroit, Mich.....	do.....
General Motors Acceptance Corporation.	490, 364, 966	Financing auto sales.	New York.....	Jan. 29, 1919	New York, N. Y.....	do.....
Radio-Keith-Orpheum Corporation.	91, 559, 816	Picture and theatrical producer.	Maryland.....	Oct. 25, 1928	do.....	do.....

Controlled by General Motors Corporation.
Bankrupt—reorganizing.

* Not incorporated—associations under voluntary trust.

Domestic industrial corporations with total assets of \$50,000,000 and over—Continued

[Moody's Industrials, 1937]

Name of company	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not	Remarks
Schenley Distillers Corporation.....	\$63,896,920	Distilling liquors.	Delaware.....	July 11, 1933	New York.....	Yes.....	Subsidiary Cities Service Co.
Paramount Pictures, Inc.....	116,869,157	Moving-picture producing and distributing.	New York.....	July 19, 1916	do.....	do.....	
Indian Territory Illuminating Oil Co.....	130,188,548	Producing crude oil and natural gas.	New Jersey.....	Dec. 11, 1901	Bartlesville, Okla.....	do.....	
Minnesota & Ontario Paper Co.....	76,372,430	Manufacturing paper products.	Maine.....	Sept. 17, 1908	Minneapolis, Minn.....	do.....	Owns 1 subsidiary.
National Steel Corporation.....	189,530,502	Manufacturing iron and steel products.	Delaware.....	Nov. 7, 1929	Pittsburgh, Pa.....	do.....	
Port of Para.....	114,138,119	Operate port of Para, Brazil.	Maine.....	Sept. 12, 1906	Portland, Maine.....	No.....	
The May Department Stores Co.....	60,937,312	Department store chain.	New York.....	June 4, 1910	St. Louis, Mo.....	Yes.....	Controlled by Standard Oil Co. (Indiana).
Phillips Petroleum Co.....	187,500,717	Refining petroleum products.	Delaware.....	June 13, 1917	Bartlesville, Okla.....	do.....	
Singer Manufacturing Co.....	163,360,163	Manufacturing sewing machines.	New Jersey.....	Feb. 20, 1873	Elizabeth, N. J.....	do.....	
Standard Oil Company (Indiana).....	710,447,971	Refining petroleum products.	Indiana.....	June 18, 1889	Chicago, Ill.....	do.....	Controlled by Empire Gas & Fuel Co.
Pan American Petroleum & Transportation Co.....	82,477,621	do.	Delaware.....	Feb. —, 1916	New York, N. Y.....	do.....	
Texas Gulf Sulphur Co.....	61,537,593	Production of sulphur.	Texas.....	Dec. 23, 1909	Houston, Tex.....	No.....	
Corn Products Refining Co.....	120,382,076	Manufacturing corn products.	New Jersey.....	Feb. 6, 1906	New York, N. Y.....	Yes.....	Controlled by Empire Gas & Fuel Co.
The Pure Oil Co.....	162,828,325	Refining petroleum products.	Ohio.....	Apr. 9, 1914	Chicago, Ill.....	do.....	
Empire Oil & Refining Co.....	213,996,757	do.	Delaware.....	(?)	Bartlesville, Okla.....	do.....	
National Distillers Products Corporation.....	63,003,678	Distillers of liquors.	Virginia.....	Apr. 18, 1924	New York, N. Y.....	do.....	Controlled by Empire Gas & Fuel Co.
United Drug, Inc.....	61,308,902	Manufacturing drug products.	Delaware.....	Aug. 14, 1933	Boston, Mass.....	do.....	
General Electric Co.....	365,745,385	Manufacturing electrical appliances.	New York.....	Apr. 15, 1892	Schenectady, N. Y.....	do.....	
The Sherwin-Williams Corporation.....	54,214,873	Manufacturing paint and varnish.	Ohio.....	July 18, 1884	Cleveland, Ohio.....	do.....	Controlled by Empire Gas & Fuel Co.
Standard Oil Co. of California.....	588,103,421	Refining petroleum products.	Delaware.....	Jan. 27, 1926	San Francisco, Calif.....	do.....	
Son Oil Co.....	117,448,843	do.	New Jersey.....	May 2, 1901	Philadelphia, Pa.....	do.....	
United Fruit Co.....	186,781,909	Steamship company and fruit growers.	do.....	Mar. 30, 1899	Boston, Mass.....	do.....	

Domestic railroad corporations with total assets of \$50,000,000 and over

[Poor's Railroad Volume, 1937]

Name of corporation	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not, or controlling company
Norfolk & Western Ry. Co.	\$540,465,081	Railroad	Virginia	Jan. 15, 1896	Roanoke, Va.	Yes.
Chicago Great Northern R. R. Co.	145,808,770	do	Illinois	Aug. 11, 1909	Chicago	Do.
The Atchison, Topeka & Santa Fe Ry. Co.	1,284,177,735	do	Kansas	Dec. 12, 1895	Topeka, Kans.	Do.
Missouri-Kansas-Texas R. R. Co.	250,916,847	do	Missouri	July 6, 1922	St. Louis	Do.
Lehigh Valley R. R. Co.	242,949,245	do	Pennsylvania	Apr. 21, 1846	Philadelphia	Do.
Great Northern Ry. Co.	336,649,393	do	Minnesota	Mar. 1, 1888	St. Paul, Minn.	Do.
The Delaware, Lackawanna & Western Ry. Co.	216,570,329	do	Pennsylvania	Mar. 19, 1848	New York	Do.
Kansas City Terminal Ry. Co.	55,537,985	Railroad terminal	Missouri	July 19, 1906	Kansas City	No.
The Kansas City Southern Ry. Co.	137,287,529	Railroad	Missouri	Mar. 19, 1900	do	Do.
Chicago & Northwestern Ry. Co.	674,045,980	do	Wisconsin	June 1, 1859	Chicago	Do.
Union Pacific R. R. Co.	1,194,612,410	do	Utah	July 1, 1897	Omaha, Nebr.	Do.
Chicago, Indianapolis, & Louisville Ry. Co.	55,878,020	do	Indiana	May 26, 1897	Chicago	Do.
Chicago & Western Indiana R. R. Co.	90,917,968	do	Illinois	Feb. 5, 1891	do	Joint control.
Chicago, Milwaukee, St. Paul & Pacific Ry. Co.	748,282,568	do	Wisconsin	Mar. 3, 1927	do	Yes.
Northern Pacific Ry. Co.	841,888,361	do	do	July 1, 1890	St. Paul, Minn.	Do.
The New York Central R. R. Co.	1,789,232,675	do	New York	Nov. 2, 1867	Albany, N. Y.	Do.
Boston & Albany R. R. Co.	67,480,809	do	Massachusetts	Nov. 2, 1867	Boston	New York Central Ry. Co.
The Cleveland Union Terminals Co.	91,069,715	Railroad terminal	Ohio	Aug. 2, 1906	New York	No.
West Shore R. R. Co.	60,785,611	Railroad	New York	Dec. 7, 1885	do	New York Central Ry. Co.
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.	328,417,938	do	Indiana	June 7, 1889	Cincinnati	Do.
The Michigan Central R. R. Co.	199,078,567	do	Michigan	Mar. 23, 1846	do	Yes.
The Pittsburgh & Lake Erie Ry. Co.	114,493,939	do	Pennsylvania	Jan. 5, 1876	Pittsburgh	New York Central Ry. Co.
Terminal R. R. Association of St. Louis	85,096,850	Railroad terminal	Missouri	July 1, 1899	St. Louis	Yes.
Southern Railway Co.	622,249,246	Railroad	Georgia	Feb. 20, 1894	Richmond, Va.	Yes.
Mobile & Ohio R. R. Co.	67,096,200	do	Alabama	Feb. 3, 1848	Mobile, Ala.	Southern Ry. Co.
The Western Pacific R. R. Corporation	114,457,636	do	California	June 2, 1916	New York	Yes.
The Western Pacific R. R. Co.	178,016,336	do	California	June 2, 1916	San Francisco	Western Pacific Corporation.
Denver & Rio Grande Western Ry. Co.	246,814,265	do	Colorado	Nov. 2, 1870	Denver, Colo.	Joint control.
Florida East Coast Ry. Co.	123,304,719	do	Florida	May 23, 1832	St. Augustine, Fla.	No.
Duluth, Massena & Northern Ry. Co.	63,964,412	do	Minnesota	Feb. 11, 1891	Duluth, Minn.	Do.
Illinois Central R. R. Co.	710,415,024	do	Illinois	Feb. 10, 1851	Chicago	Yes.
Chicago, St. Louis & New Orleans Ry. Co.	154,103,078	do	Louisiana	Nov. 7, 1877	do	Illinois Central R. R. Co.
The Yazoo & Mississippi Valley R. R. Co.	76,487,423	do	Mississippi	Oct. 24, 1892	do	Do.
Central of Georgia Ry. Co.	107,854,281	do	Georgia	Oct. 17, 1896	Savannah, Ga.	Do.
Chicago, Burlington & Quincy R. R. Co.	673,564,335	do	Illinois	Feb. 12, 1854	Chicago	Yes.
The Colorado & Southern Ry. Co.	117,445,618	do	Colorado	Dec. 27, 1893	Denver, Colo.	Chicago, Burlington & Quincy R. R. Co.
Wabash Ry. Co.	347,206,603	do	Indiana	Oct. 22, 1915	St. Louis	Yes.
Chicago Union Station Co.	90,275,280	Railroad terminal	Illinois	July 3, 1913	Chicago	No.
The Baltimore & Ohio R. R. Co.	1,209,974,749	Railroad	Maryland	Feb. 23, 1827	Baltimore	Yes.

Domestic railroad corporations with total assets of \$50,000,000 and over—Continued

Name of corporation	Gross assets	Nature of business	State of incorporation	Date of incorporation	Principal place of business	Whether holding company or not, or controlling company
The Baltimore & Ohio Chicago Terminal R. R. Co.	\$51,529,253	Railroad terminal.	Illinois	Jan. 8, 1910	Baltimore	Baltimore & Ohio R. R. Co.
The Alton R. R. Co.	86,399,976	Railroad	do	Jan. 7, 1931	Chicago	Do.
Reading Co.	469,232,201	do	Pennsylvania	May 24, 1871	Philadelphia	Yes.
The Central R. R. Co. of New Jersey	202,015,818	do	New Jersey	Feb. 22, 1849	New York	Reading Co.
Western Maryland Ry. Co.	175,990,373	do	Pennsylvania	Jan. 23, 1917	Baltimore	Yes.
The Pennsylvania R. R. Co.	2,732,453,010	do	do	Apr. 13, 1846	Philadelphia	Do.
The Pennsylvania, Ohio & Detroit R. R. Co.	54,568,444	do	Michigan	Aug. 25, 1924	Columbus, Ohio	Pennsylvania R. R. Co.
The Pennsylvania Tunnel & Terminal R. R. Co.	129,157,000	Railroad terminal.	Pennsylvania	June 29, 1907	Philadelphia	Do.
The Philadelphia, Baltimore & Washington R. R. Co.	173,856,039	Railroad	Delaware	Nov. 1, 1902	do	Do.
The Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.	310,581,120	do	Pennsylvania	Dec. 21, 1916	do	Do.
The Pittsburgh, Fort Wayne & Chicago Ry. Co.	164,012,824	do	do	Feb. 28, 1902	do	Do.
United New Jersey R. R. & Canal Co.	63,585,271	do	New Jersey	May 18, 1872	Trenton, N. J.	Do.
Western New York & Pennsylvania Ry. Co.	69,059,894	do	New York	Mar. 18, 1895	Philadelphia	Do.
The Long Island R. R. Co.	151,008,532	do	do	Apr. 24, 1834	New York	Do.
Pennsylvania Co.	242,223,533	do	Pennsylvania	Apr. 7, 1870	Philadelphia	Do.
The Pennroad Corporation	143,932,458	do	Delaware	Apr. 24, 1929	Wilmington, Del.	Yes.
Detroit, Toledo & Ironton R. R. Co.	51,553,313	do	do	Feb. 21, 1914	Dearborn, Mich.	Pennroad Corporation.
The Pittsburgh & West Virginia R. R. Co.	64,372,002	do	Pennsylvania	Nov. 7, 1916	Pittsburgh, Pa.	Do.
St. Louis-San Francisco Ry. Co.	464,657,885	do	Missouri	Aug. 24, 1916	St. Louis, Mo.	Yes.
The Chicago, Rock Island & Pacific Ry. Co.	530,231,567	do	Illinois	June 2, 1830	Chicago	Do.
Allegheny Corporation	221,254,331	do	Maryland	Jan. 26, 1929	Cleveland	Do.
The Chesapeake Corporation	122,728,317	do	do	May 5, 1927	do	Allegheny Corporation.
The Chesapeake & Ohio Ry. Co.	752,886,039	do	Virginia	July 1, 1878	Richmond, Va.	Do.
Chicago & Eastern Illinois Ry. Co.	85,720,611	do	Illinois	Dec. 13, 1920	Chicago	Do.
Erie Railway Co.	621,201,181	do	New York	Nov. 14, 1895	Cleveland	Do.
The New York, Chicago & St. Louis Ry. Co.	292,033,354	do	Consolidation	Apr. 11, 1923	do	Do.
Pere Marquette Ry. Co.	180,450,977	do	Michigan	Mar. 12, 1917	Detroit	Do.
The Wheeling & Lake Erie Ry. Co.	105,428,000	do	Ohio	Dec. 4, 1916	Cleveland	Yes.
Missouri Pacific R. R. Co.	675,080,033	do	Minnesota	Mar. 5, 1917	do	Allegheny Corporation.
New Orleans, Texas & Mexico Ry. Co.	62,613,407	do	Louisiana	Feb. 29, 1916	do	Do.
International-Great Northern R. R. Co.	62,500,861	do	Texas	Aug. 21, 1922	Houston, Tex.	Do.
The Texas & Pacific R. R. Co.	206,862,923	do	Louisiana	Mar. 3, 1871	Dallas, Tex.	Do.
Seaboard Air Line Ry. Co.	296,213,895	do	Consolidation	Oct. 11, 1915	Norfolk, Va.	Yes.
Bessemer & Lake Erie R. R. Co.	76,898,424	do	Pennsylvania	Dec. 31, 1900	Pittsburgh	United States Steel Corporation.
Boston & Maine R. R.	322,702,540	do	Consolidation	Jan. 1, 1835	Boston	Yes.
Maine Central R. R. Co.	65,078,040	do	Maine	Oct. 28, 1862	Portland, Oreg.	Do.
The Cincinnati, New Orleans & Texas Pacific Ry. Co.	61,688,560	do	Ohio	Sept. 8, 1881	Cincinnati, Ohio	Do.
Atlantic Coast Line R. R. Co.	368,288,962	do	Virginia	Mar. 14, 1836	Wilmington, N. C.	Do.
Louisville & Nashville R. R. Co.	573,562,059	do	Kentucky	Mar. 5, 1850	Louisville, Ky.	Atlantic Coast Line R. R. Co.

Nashville, Chattanooga, & St. Louis Ry. Co.	66,595,677	do.	Tennessee	Dec. 11, 1845	Nashville, Tenn.	Do.
Carolina, Clinchfield & Ohio Ry. Co.	75,080,857	do.	Virginia	Jan. 26, 1905	New York	Do.
The Delaware & Hudson Co.	121,215,331	do.	New York	Apr. 23, 1823	do.	Yes.
The Delaware & Hudson Ry. Corporation	113,156,180	do.	do.	Dec. 1, 1928	do.	Do.
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.	170,202,261	do.	Minnesota	June 11, 1888	Minneapolis	Do.
Wisconsin Central Ry. Co.	76,399,754	do.	do.	Dec. 12, 1897	do.	Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.
Grand Trunk Western R. R. Co.	127,128,206	do.	Michigan	May 9, 1928	Detroit, Mich.	Canadian National Ry. Co.
The Virginian Ry. Co.	166,937,663	do.	Virginia	Feb. 20, 1904	Norfolk, Va.	Yes.
Southern Pacific Co.	1,225,551,596	do.	Kentucky	Mar. 17, 1884	New York	Do.
Central Pacific Ry. Co.	378,606,784	do.	Utah	July 29, 1899	San Francisco	Southern Pacific Ry. Co.
Southern Pacific Ry. Co.	378,259,983	do.	California	Mar. 10, 1902	do.	Southern Pacific Co.
Texas & New Orleans R. R. Co.	230,511,261	do.	Texas	Mar. —, 1874	Houston, Tex.	Do.
North Western Pacific Ry. Co.	66,353,770	do.	California	Jan. 8, 1907	San Francisco	Do.
Pacific Electric Ry. Co.	114,530,559	do.	do.	Sept. 1, 1911	do.	Do.
St. Louis Southern Ry. Co.	149,374,124	do.	Missouri	Jan. 16, 1891	St. Louis, Mo.	Do.
The New York, New Haven & Hartford R. R. Co.	594,839,091	do.	Connecticut	Aug. 6, 1872	New Haven, Conn.	Yes.
New York, Ontario & Western Ry. Co.	102,987,811	do.	New York	Jan. 21, 1880	New York	Southern Pacific Co.

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